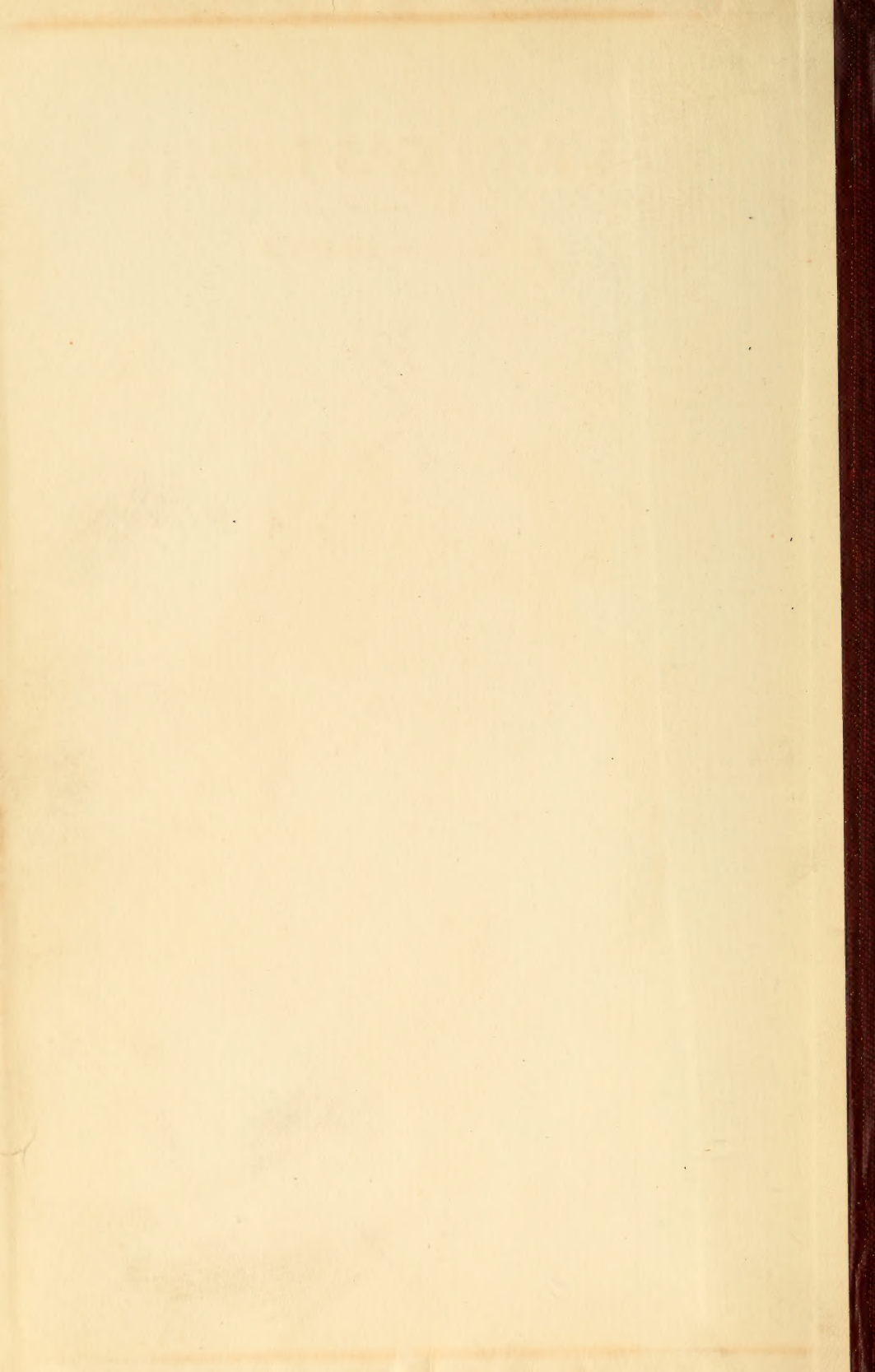


OIL AND GAS RIGHTS

MORRISON—DE SOTO







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OIL AND GAS RIGHTS

ON THE PUBLIC DOMAIN AND ON PRIVATE LANDS, DISCOVERY AND
LOCATION OF OIL PLACER CLAIMS. THE WITHDRAWAL ACTS,
LEASES AND OTHER CONTRACTS BETWEEN THE OWNER
AND THE OPERATOR INCLUDING FORFEITURE
AND PROTECTION AGAINST DRAINAGE

THE SINKING, PUMPING AND SHOOTING OF WELLS
STATUTES, DECISIONS AND FORMS

THE OIL LEASING ACT OF 1920. THE REGULATIONS OF THE INTERIOR
DEPARTMENT AND PROCEDURE TO PROCURE PERMITS AND
LEASES AND PROTECT TITLES UNDER THAT ACT.
FOR THE LEGAL PROFESSION AND OIL
PROSPECTORS AND COMPANIES

By

R. S. MORRISON AND EMILIO D. DE SOTO
OF THE COLORADO BAR

SAN FRANCISCO, CAL.

BENDER-MOSS COMPANY

LAW BOOK PUBLISHERS

OIL AND GAS RIGHTS

ON THE PUBLIC AND ON PRIVATE LANDS, DISCOVERY AND
LOCATION OF OIL CLAIMS, THE WATERWAY ACT,
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R. S. MORRISON AND EMILIO D. DE SOTO

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LEASES AND PROTECT THERE UNDER THAT ACT
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BY

R. S. MORRISON AND EMILIO D. DE SOTO

OF THE OIL AND GAS

E. R. ANDREWS PRINTING COMPANY, Rochester, N. Y.

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PREFACE.

The Passage by Congress of what is known as the Oil and Gas Leasing Act, by which all deposits of Coal, Phosphate, Sodium, Oil, Oil Shale and Gas were withdrawn from the public domain, and the disposition and control of such deposits taken over by the Government under Regulations promulgated by the Secretary of the Interior, suggested the necessity of this work.

It is intended to set forth the latest decisions and principles concerning the rights of the owner in fee of lands not affected by the Act, containing oil and gas deposits; the rights of lessors and lessees of oil and gas lands, and of all persons who have contractual relations concerning the same, and to treat upon the various topics and subjects incident to the laws governing the owning, leasing, production, sale and transportation of oil and gas, with the latest text of the statutes of the different states which have legislated upon oil and gas rights.

A full text of the Oil and Gas Leasing Act is given with an analysis of its provisions. An attempt has been made to construe its sections where the meaning of any of them seems to be obscure or uncertain, and the latest decisions of the Department construing some of the provisions of the Act are given.

The regulations of the Secretary of the Interior are printed in full, and a knowledge of these regulations concerning each mineral affected by the Act is necessary to an understanding of the right given by the law to prospect for, or secure leases to work, such minerals, and the required forms for securing permits and leases under the Act are given together with other useful forms pertaining to the subject matter of the book.

MORRISON & DE SOTO.

Denver, Colorado.

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McNALLY & DE SOTO

Denver, Colorado.

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MORRISON'S OIL RIGHTS.

CHAPTER 1.

INTRODUCTORY.

Oil and natural gas have been known locally from the earliest times as mere natural curiosities. Not until within the last sixty years has it been learned that they are to be found in incredible quantity at great depths under immense and widely scattered areas. Within that time these deposits have become storehouses of wealth and power so that their pursuit and production have come to be classed as one of the great industries of the world.

Oil Fields.

In the United States they are found under almost all of its central portion, excluding New England, the States bordering on the Atlantic, the Northwest corner and the Northern tier of States.

The first known and perhaps the largest oil field extends from western New York and Pennsylvania to Illinois, including West Virginia, Kentucky, East Tennessee and Northern Alabama.

The Oklahoma oil field extends into Kansas and Arkansas, and there is a vast extent of oil territory in Texas and Louisiana. It is found again in quantity in California. There is a local field in Colorado and another in Wyoming. It is found in smaller amounts in almost every locality exclusive of the areas above mentioned.

The great oil fields of the world outside of the United States are Mexico, Ontario, Burma, the Baku District in Russia, and Galicia. It is found in New Zealand, but so far not in Australia,

altho bored for there in many places. It is found in many other parts of Europe, Africa and Asia, in Ecuador, Peru and other parts of South America, but notwithstanding its supposed relation to coal it has never been found in commercial quantity among the great coal deposits of England.

Its geological deposition is not confined to any one period. It is found in almost every sedimentary stratum excluding the volcanic and eruptive formations. It is generally conceded to be of animal or vegetable origin.

It began to acquire its economic importance from the drilling of the first well at Titusville, Pa., in 1859.

Classical and Scriptural Mention.

Upon the announcement of any alleged discovery comes immediately the denial that it is new and in most instances such traverse is made good. Hints of the telephone and experiments with the automobile are shown up long before they became accomplished facts. Even the steam engine goes back to Hero of Alexandria one or two centuries before the Christian Era.

Oil and gas are no exceptions to the rule. They were known to the Chinese and Japanese and are mentioned by numberless ancient writers and travelers, Marco Polo, of course, not excepted, but they never became commercial industries until the last half of the nineteenth century barring the limited working of the Baku Oil field hundreds of years ago.

Oil springs or fountains of gas are mentioned by Strabo, Pliny, and Herodotus. Plutarch describes "a gulf of fire which streamed continually as from an inexhaustible source" which was shown to Alexander the Great.

Job, chap. 28, 1-11, is the oldest known description of a mine, expressed in the poetic language of the orient but "The rock poured me out rivers of oil," chap. 29, 6, is only a figure of speech. Deuteronomy 32, 13 speaks of "oil out of the flinty rock." But in the first chapter of the second Book of Maccabees there is undoubted reference to petroleum in a mysterious narrative going back to the fire worshippers and strange to say accounting for the origin of the modern term "naphtha."

Interesting accounts of the ancient history of oil are found in Brannet on Petroleum in Sir Boverton Redwoods' work and in the first chapter of Thornton on Oil and Gas.

Quantity.

The quantity of oil or gas to be expected may be a mere moistening of the well or a yield wholly insufficient to pay for operation much less to refund the cost of sinking.

Enlarging from this come a class of wells that may be likened to the petty business of life, where the margin of profit, in any event small, depends on the industry and good judgment of the manager of the well. From such small results it may advance to full repayment of expenditure and heavy interest upon the capital.

At the other extreme there are instances, and many of them, scattered over widely separated fields, where oil has been struck yielding thousands of barrels per day and natural gas in lavish quantity.

In the original Pennsylvania field, the Oil Creek region, the Philips No. 2 well gave a stream of 4,000 barrels per day. It yielded nearly 1,000,000 barrels the first year. Struck in 1861 it was not shut down till 1873. Another well close by yielded 3,000 barrels per day.

The Maple Shade well struck in 1863 started at 1000 barrels per day and is said to have yielded \$1,500,000 profit to its owners.¹

In the Baku county, Russia, in 1877 a well at 280 feet poured out for three months about 270,000 gallons daily, all of which was wasted. A well called Shaitan Bazaar (Satan's Shop) at 490 feet brought 4,000,000 gallons per day which was mostly wasted.

In 1883 No. 14 of Mirzoeff spouted irregularly from 20,000 to 400,000 gallons daily. Nobel No. 25 well yielded 2,000,000 gallons daily. The Droobjia Fountain in 1883 produced at a value in money of £11,000 daily. It shot up over 200 feet high,

¹ Baker and Hamor, p. 223.

utterly wrecking the rig that gave it vent to the surface, and flowed into channels merging into little lakes.

The Zubuloff well threw up its oil 350 feet above the casing. In the same region a well yielding over 500,000 poods per day caught fire which extinguished itself by the well becoming clogged.²

Other strikes in Mexico, Louisiana, Texas, and in fact in most of the large oil fields have rivaled these instances. As a matter of course seldom have facilities been at hand to meet such rushes and there has been judicial recognition of such fact as excusing strict compliance with the terms of the lease.

In the Baku region natural gas was tapped that poured forth with such tremendous energy that it seemed to threaten to exhaust all possible source of supply and more than one of such wells where no means existed to save the product were known as outlaws, rogues, or robbers.

Where such wells have caught fire they have exhibited illumination and conflagration comparable only to small volcanos and their extinguishment has taxed the ingenuity of experts.

Such occurrences are needed to impress on the mind the over lavish generosity of nature, giving life, health and motion from overflowing storehouses, built up from the billions of individuals of forms of lowly life, aggregated into multitudinous and boundless supply of energy and power, accumulated through untold ages prepared since the foundation of the world.

Associated Fluids.

Along with oil and gas may be associated salt water and fresh water both of which affect the sought for results.

Where two wells are close neighbors the water supply in one may affect the oil supply in another. In the case of the two Pennsylvania wells above mentioned when either ceased working only water came from the other.

This commingling of fluids and gases indicates underground reservoirs advancing to the stage of flowing subterranean streams to fill the artificially produced vacuums, compelling re-

² Sir Boverton Redwood, p. 7.

sort to mechanical devices to save the good and lose the bad, combined in the output and brought to the surface together.

And when it comes to the manipulation of the product even before it leaves the plant, industry must get to work to produce changes before marketing which renders oil and gas production a field for ingenuity and adds some intellectual pleasure to the mechanical acts of sinking and pumping.

Poison gas may be struck or sulphur, and when the bore penetrates coal, especially through an opened mine, its gas threatens complications dangerous to the bore and the bore is not friendly to the mine.

Chemical Composition and Other Incidents.

Petroleum is a combination of at least thirty hydrocarbons. The variations in these hydrocarbons and associated elements determine its fitness for light, heat or lubrication and its commercial separation into naphtha, benzine, gasoline or kerosene.

In color, the crude oil shows shades of green, yellow and brown. The odor varies with the color. The specific gravity runs from 0.650 to 0.9960. A Mexican sample has even been claimed to exceed 1 so that it would sink in water. The theory that its specific gravity has any relation to the depth at which found does not seem to be verified to any practical results but in certain kinds of contracts specific gravity "constitutes the simplest means of controlling deliveries of petroleum."¹ Its density increases on exposure to air, varying in different districts.

In certain statutory tests the Baumé scale is required to be used, a hydrometer going back to a publication by Antoine Baumé about 1768, a scale originally as unsatisfactory as the thermometer of Fahrenheit, which, based on an arbitrary starting point, has produced endless confusion in heat measurements.

The by-products of oil and gas are innumerable, ranging from dye-stuffs to vaseline, including the duplication of natural products by the process called synthesis and covering all the results originally extracted from shale, coal, and tar.

The expansion of oil by heat, its inflammability at certain de-

¹ Bacon and Hamor, p. 94.

grees, its base, whether paraffin or asphalt, are all points largely foreign to the scope of this book but of importance in the contracts of the refineries and other plants and the immense volume of manufacture and commerce which have developed from and followed the output of the original crude oil.

Source of Title.

In the Public Domain States on the Pacific Coast and on the Rocky Mountain slopes, the titles largely became initiate under the placer mining Act of 1870. In the older States they depend on common-law grants, but even in the States lately territories much oil value exists under agricultural entries.

The future acquisition of oil rights on the Public Domain will come under the Leasing Act of 1920.

Judicial Notice.

Before we consider the numerous subdivisions of the subject, it may be here remarked that many of the incidents peculiar to oil and gas are judicially noticed and there is no industry where the courts assume to know so much about what may be called the trade secrets of the business, as in the suits involving oil and gas, their production, handling and distribution, from the producer to the ultimate consumer.

Early Decisions.

Hail v. Reed, 15 B. Mon. (Ky.) 479, 11 M. R. 103, was decided in 1854. It was replevin for three barrels of "American Oil" worth \$1.25 per gallon, extracted from a hand sunken well. It held that the severance of the oil from the freehold did not prevent its recovery by personal action and that the case is not analogous to the surface owner's right to streams of water.

In 1859 when the fact that oil could be discovered by sinking was a very recent novelty, McGuire, the owner, gave to one Baird, written authority for a valuable consideration to prospect for oil. Under this contract between \$20,000 and \$30,000 were expended. The court gave a critical exposition of the contract treating it as an executed license of which the second party

could not be arbitrarily ousted but denied all relief on the technical point that the contract being only a personal license and therefore not assignable and Baird having assigned it or sublet under it, had lost all right to the premises. *Dark v. Johnston*, 55 Pa. 164, 93 Am. Dec. 732, 9 M. R. 283.

A decision so unjust in its practical results would hardly be expected from any Court at this day when the subject has been exploited by thousands of cases.

French v. Brewer, 3 Wall. Jr. 346, Fed. Cas. No. 5,096, 11 M. R. 108, decided in 1861 justly holds that contracts made in ignorance of the subject matter should be construed with due regard to that fact.

It involved the construction of a contract drawn in 1854 by an ignorant scrivener giving the privilege of taking oil from a tract on Oil creek at a place where oil was collected on the surface of the water, and while the lease was in force the art of finding oil by drills had been discovered. It was on motion for preliminary injunction and the only point decided, except the suggestion above noted, was that the injunction should be denied where present injury would result to the respondents while the sinking of the new wells would be an ultimate benefit to the complainants. The case seems never to have been carried further.

CHAPTER 2.

MINERAL CHARACTER.

Oil and Gas are Minerals.

That oil and gas are minerals has been almost everywhere decided. The question has arisen frequently on the construction of deeds reserving all minerals and in Government grants excepting minerals. *Chino Land & Water Co. v. Hamaker* (Cal. App.) 178 Pac. 738; *Barker v. Campbell-Ratcliff L. Co.* (Okla.) 167 Pac. 468; *De Moss v. Sample*, 143 La. 243, 78 So. 482; *Murray v. Allred*, 100 Tenn. 100, 66 Am. St. Rep. 740, 39 L.R.A. 249, 43 S. W. 355; *Texas Co. v. Daugherty*, 107 Tex. 226, 176 S. W. 717; *Lanyon Zinc Co. v. Freeman*, 68 Kan. 691, 1 Ann. Cas. 403, 75 Pac. 995; *Ontario N. G. Co. v. Smart*, 19 Ontario 595. Even the right to operate for oil and gas has been held to be a reserve of those minerals. *Jamison Coal, etc., Co. v. Carnegie N. Gas. Co.*, 77 W. Va. 30, 87 S. E. 451. And a grant of the royalties has been construed as a grant of the oil. *Paxton v. Benedum-Trees Oil Co.*, 80 W. Va. 187, 94 S. E. 472.

The argument in favor of construing oil and gas to be minerals is so strong and this construction so uniform that it is beyond dispute almost everywhere.

Only in Pennsylvania and Ohio there are decisions holding oil and gas under general reservations, to be nonmineral. *Preston v. South Penn Oil Co.*, 238 Pa. 301, 86 Atl. 203; *Silver v. Bush*, 213 Pa. 195, 62 Atl. 832; *Dunham v. Kirkpatrick*, 101 Pa. 36, 47 Am. Rep. 696; *Detlor v. Holland*, 57 Ohio St. 492, 40 L.R.A. 266, 49 N. E. 690. And the same in Kentucky. *McKinney's Heirs v. Central Ky., etc., Gas Co.*, 134 Ky. 239, 20 Ann. Cas. 934, 120 S. W. 314, but this Kentucky case is virtually overruled in *Kentucky Diamond Min., etc., Co. v. Kentucky, etc., Co.*, 141 Ky. 97, Ann. Cas. 1912C 417, 132 S. W. 397, and *Scott v. Laws* (Ky.) 215 S. W. 81.

While in Pennsylvania oil and gas seem not to be covered by words of general exception, they are constantly recognized as minerals on accounting between cotenants and in many other cases. *McIntosh v. Ropp*, 233 Pa. 497, 82 Atl. 949. Even under an Act passed before oil value or existence was known. *Thompson v. Noble*, 3 Pittsburgh 201, 11 M. R. 137.

Oil is a mineral and therefore real estate and a guardian must treat it as such. *Stoughton's Appeal*, 88 Pa. St. 198.

Gas and oil not reduced to possession are real estate and belong to the owners of the fee. *Richmond Natural Gas Co. v. Davenport*, 37 Ind. App. 25, 76 N. E. 525; *Preston v. White*, 57 W. Va. 278, 50 S. E. 236; *Canon v. Scott* (Tex. Civ.) 217 S. W. 429. They are included under the word "land." *Kennedy v. Ohio Fuel Co.* (W. Va.) 101 S. E. 159. Oil and gas are land, a part of the soil in which they are found. *Haskell v. Sutton*, 53 W. Va. 206, 44 S. E. 533.

No definition of the word minerals will apply to all cases: the Court must consider the position of the parties as well as the wording of the paper. *Rock House Fork Land Co. v. Raleigh Brick, etc., Co.* (W. Va.) 97 S. E. 684.

The subject is necessarily associated with the conveyance or reservation of minerals covered in later chapters.

The Question Whether an Oil Well Is a Mine

or drilling for or pumping oil is mining, has come up indirectly in several cases.

In *Kreps v. Brady*, 133 Pac. 216, there arose the second of these queries as to whether drilling an oil well was mining. The Oklahoma Constitution provided that the fellow servant law should not apply to mining. If drilling was mining the defendant could not plead the negligence of a fellow servant.

The Court in a very able opinion held that it was not mining. The reasoning was based on the dictionary definitions of mines and mining and on the fact that the Oklahoma mining statutes did not refer to oil wells. But they did not consider the point that drilling for oil is a new industry, a mode of getting mineral not known until very recently, long after such definitions had become stereotyped.

The Constitution of Louisiana exempted from taxation for a certain period, "property employed in mining operations." The Court held that such phrase did not cover an oil well and that an oil well was not a mine, citing several definitions of that word and cognate terms. Its conclusion was that oil was not a mineral covered by the noun and adjective "mineral operations."

In neither of these cases is any reference made to the well known fact that the law adapts itself to changed conditions and the meaning of words also changes to meet such changes of conditions. Not only is drilling for oil a modern industry but there are other innovations. In the Frash process sulphur is mined by letting down hot water in a tube, bringing back the saturated water and evaporating the sulphur on the surface.

There is more than one mine in the United States where copper and nitre are produced by evaporation of the water which holds such minerals in solution. The Court adapts the law to the conditions of a new country. *Findlay v. Smith*, 6 Munf. 134, 13 M. R. 182.

On the other hand the reservation in a deed of the right to mine was held broad enough to allow the boring for oil. *Luse v. Boatman*, 217 S. W. 1096; *Luse v. Parmer*, 221 S. W. 1031.

None of these decisions reach the point where it can be said that the question is definitely settled and it admits of far more thorough argument than can be found in the reports of the cases cited.

CHAPTER 3.

OWNERSHIP.

Land Owned in Fee.

That the owner of the fee simple title, owns the oil and gas under his land can neither be doubted nor questioned. The only serious qualification to this is the doctrine of *ferae naturae*, based on the fugacious character of these minerals as elsewhere discussed.

Even if the land has been patented under some sort of non-mineral entry, the subsequent discovery of mineral value does not divest his ownership, barring certain cases where knowledge or anticipation of such value is chargeable to him.

Ocean, Lakes and Rivers.

Ownership under the seashore, lakes and rivers remains in the original sovereign unless it has passed by grant or Legislative Act, or has been indirectly transferred as a riparian right.

Sea Shore.

The United States seems never to have owned or claimed minerals under the sea. They belong to the Territory or State.

This question seems to be definitely settled by the case of *Shively v. Bowlby*, 152 U. S. 1, 38 L. ed. 331, 14 Sup. Ct. 548. The State not only owns the minerals under the sea, but between high and low tide. To the same effect is *Pennsylvania R. Co. v. New York, etc., R. R. Co.*, 23 N. J. Eq. 157.

The owner to the shore line has right of access to the sea, and what are known as littoral rights. In *San Francisco Sav. Union v. R. G. R. Petroleum, etc., Co.*, 144 Cal. 134, 103 Am. St. Rep. 72, 1 Ann. Cas. 182, 66 L.R.A. 242, 77 Pac. 823, the erection

of an oil derrick under tide water on his front was enjoined in favor of such littoral proprietor.

Tide lands are such public lands as are allowed to be let for oil and gas leases. *State v. Savidge*, (Wash.) 188 Pac. 923.

River Beds and Lakes.

The State owns the minerals under the bed of navigable rivers. The riparian owners hold title to the minerals under non-navigable rivers as at common law. The whole subject is learnedly discussed in *U. S. v. Brewer Elliott Oil Co.*, 249 Fed. 609; and in *Malcomson v. Wappoo Mills*, 86 Fed. 192. The beds of navigable streams and lakes never belonged to the United States but belong to the State itself, disposable of by the legislature. *State v. Capdeville*, 146 La. —, 83 So. 421. In *Wemple v. Eastham*, 144 La. 957, 81 So. 438, an injunction issued to protect the lessee from the State, of oil ground under river-bed.

The land office rulings conform to these decisions. The title to minerals under meandered lakes is not in the U. S. Under a navigable lake it is in the State and under a non-navigable body of water, it belongs to the riparian owners. *In re Shamway*, 47 L. D. 71; *In re Stroehle*, 47 L. D. 72. And they allow a mining claim to be located on the bed of a non-navigable river. *Cataract Gold Min. Co.*, 43 L. D. 248.

Three mining companies owned all the land surrounding a small lake of irregular shape underlaid with iron ore. By agreement they drained the lake. Most interesting questions arose as to the ownership of the bed of the lake, but the court held the matter settled as a case of boundary conflict adjusted by agreement. *Pittsburgh & L. A. Iron Co. v. Lake Superior Iron Co.*, 118 Mich. 109, 76 N. W. 395.

In the controversy between the States of Oklahoma and Texas concerning valuable oil ground in the bed of the Red river, the United States was allowed to become an intervenor, and receiver was appointed April 1, 1920. *Oklahoma v. Texas*, 40 Sup. Ct. Rep. 353.

The bed of a navigable river was held not open to oil prospectors under the Texas Statute conferring such prospecting rights over the public lands and that the survey of such river

bed by a county surveyor did not make such ground, surveyed land, under the Act of 1917. *Landry v. Robison*, 219 S. W. 819.

A Kansas Statute authorizing the taking of sand from the bed of a non-navigable river was upheld in *Wear v. Kansas*, 245 U. S. 154.

Under Highways.

it belonged to the original owner of the tract over which the road was dedicated and when the easement is abandoned, it usually reverts to such grantor or to the adjoining landowners and while in existence may be worked by such adjoining owners unless otherwise governed by local statute.

The coal under its streets belongs to the city. *Union Coal Co. v. City of La Salle*, 136 Ill. 119, 12 L.R.A. 326, 26 N. E. 506; *City of Des Moines v. Hall*, 24 Iowa 234; *Hawesville Trustees v. Hawes Heirs*, 6 Bush (Ky.) 232.

Where the ownership of the surface and subsoil is separate or when the highway has only an easement, it would seem that the respective rights could readily be adjusted under the maxim *sic utere tuo*; thus it was decided that a mining shaft on the surface of a public street was a nuisance which the city could not license in *Friend v. Porter*, 50 Mo. App. 89. But in *Zinc Co. v. La Salle*, 117 Ill. 411, 2 N. E. 406, 8 N. E. 81, the rights of the city were so strongly asserted that the adjoining owner was not allowed to drive a crosscut under the street.

Where the grant or condemnation is only of the right of way, it gives the city no title to the mineral. *Smith v. Rome*, 19 Ga. 89, 63 Am. Dec. 298, 7 M. R. 306; *Smith v. Holloway*, 124 Ind. 329, 24 N. E. 886; *Evans v. Haefner*, 29 Mo. 141; *Robert v. Sadler*, 104 N. Y. 229, 58 Am. Rep. 498, 10 N. E. 428; *Perley v. Chandler*, 6 Mass. 454, 4 Am. Dec. 159. The claim of title to the minerals asserted by the city under the Colorado Statute was denied in *City of Leadville v. Bohn Min. Co.*, 37 Colo. 248, 11 Ann. Cas. 443, 8 L.R.A.(N.S.) 422, 86 Pac. 1038.

Where the dedicator reserved the minerals and afterwards conveyed the lots, the grantee of the lots took title to the minerals. *Snoddy v. Bolen*, 122 Mo. 479, 24 L.R.A. 507, 24 S. W. 142, 25 S. W. 932. The minerals being reserved by the dedicator, the

city does not own the minerals. *City of Du Buque v. Benson*, 23 Iowa 248.

When land is covered by right of way, the minerals belong to the adjoining owner and a lease of them must respect the surface rights of the easement. The lessee cannot disturb the surface possession of the railroad, but can enjoin the sinking of a gas well. *Consumers Gas Trust Co. v. American, etc., Glass Co.*, 162 Ind. 393, 68 N. E. 1020.

CHAPTER 4.

CONVEYANCE.

Any ordinary deed of land without reservation conveys as everywhere ruled all the minerals under the land. Almost the only exception to this is where under Ancient English Law, the royal metals were supposed to remain vested in the Crown. In Colonial Grants those metals were sometimes reserved to the proprietors.

But the context of the granting or reserving clause of the conveyance may be such as to compel a construction that oil is excluded. *Horse Creek, etc., Min. Co. v. Midkiff*, 81 W. Va. 616, 95 S. E. 26; *Right of Way Oil Co. v. Gladys City Oil, etc., Co.*, 106 Tex. 94, 51 L.R.A.(N.S.) 268, 157 S. W. 737.

Anomalous conveyances are met with which require construction. Minerals have been conveyed by the name of the mineral, and the deed was held to be the conveyance of an interest in land. *Thomason v. Upshur County* (Tex. Civ.) 211 S. W. 325, and a sale by deed of what the grantor had not already sold was held to carry mineral rights reserved to him in a prior contract. *Morse v. Smyth*, 255 Fed. 981.

A deed conveying all mineral rights and the right to search for all undiscovered minerals was held a deed of the minerals and not a mere license to explore and that it carried oil and gas. *Scott v. Laws* (Ky. App.) 215 S. W. 81.

In a very late case the authorities are reviewed and oil is held to be mineral without regard to the question whether it was known as a mineral at the time of the reservation. And it was further held that the verb "to mine" was broad enough to cover the usual means by which oil is recovered. *Luse v. Boatman* (Tex. Civ.) 217 S. W. 1096.

Where a deed reserved the minerals but there was a subse-

quent deed from the same grantor to the same grantee the original reservation was killed. *Luse v. Penn* (Civ. App. Tex.) 220 S. W. 303.

In *Clay v. Palmer* (Nebr.) 177 N. W. 840, is found a contract or informal lease of the waters of a lake to extract potash.

Description.

The description of oil land conveyed or leased need not differ from the ordinary terms used. The deed of the land carries whatever lies under the soil without mention of oil or gas or any reference to minerals. But where the surface and the mineral rights are severed or where particular tracts are cut out, a careless wording often leads to unnecessary litigation.

Diamond Plate Glass Co. v. Tennell, 22 Ind. App. 132, 52 N. E. 168, is a case which treats of indefinite description, as to how far it may be determined by insertion of words omitted and when it is incurable. A tract 20 feet square was held to be so described that it could not be identified. A peculiar description of 20 foot square lots was upheld, in *Simpson v. Pittsburgh P. G. Co.*, 28 Ind. App. 343, 62 N. E. 753.

An exception of 10 acres around a certain oil well was held too indefinite to sustain a decree. *Jones v. Mount*, 30 Ind. App. 59, 63 N. E. 798.

A sweeping assignment of oil leases on land "immediately surrounding" Mound City, Kansas covers a lease more than a half mile distant. *Rhodes v. Mound City Gas, etc., Co.*, 80 Kan. 762, 104 Pac. 851.

As in ordinary deeds the grant of mining rights by reference to adjoiners and their grantors may be sufficient. *Virginia Iron, etc., Co. v. Combs* (Ky. App.) 216 S. W. 846.

A deed to school directors for land "for school purposes only" was held to convey oil rights. This construction was on the proposition that expression of the mere use for which land was intended, did not cut down the fee simple otherwise conveyed by the deed. *T. W. Phillips Gas & Oil Co. v. Lingenfelter*, 262 Pa. 500, 105 Atl. 888.

Deed and Lease Combined.

A document occasionally appears which is a combination of deed and lease. In *Feather v. Baird* (W. Va.) 102 S. E. 294, a West Virginia case, the first party sold and conveyed a piece of land for a consideration and in addition reserved a royalty of one cent per ton on all coal as it should be mined. The Court construed the royalty as an additional consideration for the sale and not as converting the deed into a lease. This made it similar to what is called in old conveyancing a ground rent.

M. O. R.—2.

CHAPTER 5.

SEVERANCE, EXCEPTION, RESERVATION.

That the mineral estate may be severed from the surface estate has been settled in England by many early decisions and has apparently never been disputed in this country. *Rowe v. Brenton*, 8 B. & C. 737.

Such severance is often created by deed direct, granting the mineral rights alone, but more usually by exception or reservation in the conveyance.

The Two Estates Not Hostile.

Where such separation of titles occurs sundry distinctions and incidents follow, for instance, that each separate estate must recognize the other, the mineral owner having the right of entry to get at his underground values and the mines being bound to furnish at least vertical support to the surface and that possession of the surface does not ripen into title against the mineral owner, nor *vice versa*.

When oil and gas are severed by reservation or exception they are a corporeal property separate from the surface, and a subsequent conveyance of the land carries the mineral title which had been held by such reservation. *Preston v. White*, 57 W. Va. 278, 50 S. E. 236.

When minerals are not intended to pass, they are cut out by a reservation or by an exception which words though somewhat different in meaning are often used interchangeably. *Moore v. Griffin*, 72 Kan. 164, 4 L.R.A.(N.S.) 477, 83 Pac. 395; *Preston v. White*, *supra*.

Adverse Possession.

Where the surface and mineral have been severed, nonuser by the mineral owner never gives title to the surface owner by ad-

verse possession. *Scott v. Laws* (Ky. App.) 215 S. W. 81. Possession by the surface owner, exercising surface incidents is not adverse to the mineral owner. *Murray v. Allred*, 100 Tenn. 100, 66 Am. St. Rep. 740, 39 L.R.A. 249, 43 S. W. 355, 19 M. R. 169.

Drilling through Coal Vein.

The owner of the surface who has conveyed the coal has the right to bore through the coal vein to find oil—at least equity will not enjoin his drilling. *Chartiers Block Coal Co. v. Mellon*, 152 Pa. St. 286, 34 Am. St. Rep. 645, 18 L.R.A. 702, 25 Atl. 597; *Pennsylvania Central Brewing Co. v. Lehigh Valley Coal Co.*, 250 Pa. St. 300, 95 Atl. 471.

Other Incidents.

After severance, the separate owners are not tenants in common. *Virginia Coal & Iron Co. v. Kelly*, 93 Va. 332, 24 S. E. 1020, 18 M. R. 395. And there is no privity of estate between them. *Hutchinson v. Kline*, 199 Pa. 564, 49 Atl. 312.

The right to support due to the mine owner and his right to use the surface for access to his mine are stated in *Mining Rights* 15th Ed. P. 300.

Severance in Late U. S. Patents.

The policy of the government for more than one hundred years and in fact until very recently has been to pass both surface and minerals to the one grantee, sometimes requiring the mineral character to be determined before patent and sometimes, as in the reservation of known mines out of placers, leaving it for future determination. But under the legislation of 1920 and for some time before, especially concerning coal lands, the government grants the mineral and surface title separate and under the leasing act provides in instances for separate leases of minerals and surface, a departure from precedent which will lead of course to controversy and litigation, but the wisdom or lack of wisdom in such cases, it is not the province of this book to discuss.

CHAPTER 6.

FUGACIOUS CHARACTER—FERAE NATURAE.

In a case in Pennsylvania considering the fugacious nature of oil and gas, they were compared to animals *ferae naturae*, the property in which does not become absolute until they are reduced to possession. *Westmoreland, etc., Natural Gas Co. v. De Witt*, 130 Pa. 235, 249, 5 L.R.A. 731, 18 Atl. 724.

It cites *Brown v. Vandergrift*, 80 Pa. 142, but that case makes mere incidental reference to the wandering existence of oil. The point is hinted at as early as 1867 in *Dark v. Johnston*, 55 Pa. 164, 93 Am. Dec. 732, 9 M. R. 283.

This fanciful but forcible illustration leads to the proposition that the proprietor or lessee of the land does not become owner of these minerals until they are reduced to possession by severance.

This precedent has been followed in numberless cases until it has become a rule of property and it is entirely too late to question it. We have nevertheless never yielded our assent to the logic of the analogy or the distinction which it forces into the law. It has led in its application, to novel if not startling decisions. The whole subject of drainage and protection is affected by it as well as many questions of pleading and practice.

A somewhat analogous case is where the law of gravitation brings down rocks or ore to a lower level. Such an instance appears in *Dearden v. Evans*, 5 M. & W. 11, 151 Eng. Reprint, 5, where stones had come down and rested on land below and in *Brown v. Forty-nine, etc., Quartz M. Co.*, 15 Cal. 152, 76 Am. Dec. 468, 9 M. R. 600 where float gold was traced from the ledge some distance down, but neither of these cases decide at what point of time the change of ownership took place.

Both of these illustrations are remote; but where fancies are adopted as facts strange consequences sometimes follow to shake the foundations upon which the rights of property should stand.

Analogy between Oil and Game.

Carrying out the alleged logic of the illustration, likening oil and gas to game and fish, comes a line of decisions; that the tenant has no estate in the oil until it is tapped. *McNish v. Stone*, 17 M. R. 22, 152 Pa. 457, note; *Venture Oil Co. v. Fretts*, 152 Pa. 451, 25 Atl. 732, 17 M. R. 543; *Florence Oil & Refining Co. v. Orman*, 19 Colo. App. 79, 73 Pac. 628; *Kolachny v. Galbreath*, 26 Okla. 772, 38 L.R.A.(N.S.) 451, 110 Pac. 902; *Beardsley v. Kansas N. Gas Co.*, 78 Kan. 571, 96 Pac. 859; *Kelly v. Keys*, 213 Pa. 295, 110 Am. St. Rep. 547, 62 Atl. 911; *Priddy v. Thompson*, 204 Fed. 955, 123 C. C. A. 277; *Lindlay v. Raydure*, 239 Fed. 928.

That the analogy between oil and gas on the one side, and fish and game on the other side of the comparison, is not complete, is pointed out in the opinion of the Court in *Ohio Oil Co. v. Indiana*, 177 U. S. 190. The State may not only regulate the taking of fish and game but it may wholly prohibit the taking. It may regulate the production of oil and gas but it cannot forbid their extraction.

The migratory character of drifting sand does not change its character while at rest upon the river bed. *Wear v. Kansas*, 245 U. S. 154.

This doctrine of *ferae naturae* is referred to in many of the opinions and perhaps *Rich v. Doneghey* (Okla.) 177 Pac. 86, states it as fully and as learnedly as any other.

Some of the cases hold that the lessee has no title till the oil is reduced to personal property. Others that he must have drilled into the oil stratum. It is only an abstract question until you come to the distinctions between real and personal property matters of taxation and forms of action, forms of action under the codes being abolished in name only. More especially it leads to questions of whether lease or license and to the intangible lines that purport to define the boundaries between corporeal and incorporeal hereditaments.

This alleged distinction is expressed in various forms:

"Oil and gas while in the earth unlike solid minerals are not the subject of ownership distinct from the soil." *Frank Oil Co. v. Belleview Gas, etc., Co.*, 29 Okla. 719, 43 L.R.A.(N.S.) 487,

119 Pac. 260; *Kolachny v. Galbreath*, 26 Okla. 772, 38 L.R.A. (N.S.) 451, 110 Pac. 902.

The lessees of oil and gas are not the owners of these minerals but only have the right to search for them. *Campbell v. Smith*, 180 Ind. 159, 101 N. E. 89; *Louisville Gas Co. v. Kentucky Heating Co.*, 132 Ky. 435, 111 S. W. 374; *Gillespie v. Fulton Oil, etc., Co.*, 239 Ill. 326, 88 N. E. 192; *Poe v. Ulrey*, 233 Ill. 56, 84 N. E. 46.

And in other cases allusion is made to the obvious resemblance to other fluid substances, but without suggestion in practical terms as to where the resemblance ends and the difference begins.

"Oil is a fluid like water; it is not the subject of property except while in actual occupancy." *Dark v. Johnston*, 55 Pa. 164, 93 Am. Dec. 732, 9 M. R. 283. Oil is governed to some extent by the analogous case of other liquids, salt and mineral waters. *Wagner v. Mallory*, 169 N. Y. 501, 62 N. E. 584, 22 M. R. 42; *Ohio Oil Co. v. Indiana*, 177 U. S. 190, 44 L. ed. 729, 20 Sup. Ct. 576, 20 M. R. 466; *Manufacturers Gas & L. Co. v. Indiana N. G., etc., Co.*, 155 Ind. 461, 50 L.R.A. 768, 57 N. E. 912, 20 M. R. 672.

Oil must be Reduced to Possession.

A corporeal interest in oil and gas, that is, a title to the same, cannot be acquired without the reduction of them first, to personal property. *Heller v. Dailey*, 28 Ind. App. 555, 63 N. E. 490. No title in the oil is vested until reduced to possession. *Priddy v. Thompson*, 204 Fed. 955, 123 C. C. A. 277.

The fugacious character of oil and gas is considered as to its effect on the construction of leases in *New American Oil Co. v. Troyer*, 166 Ind. 402, 76 N. E. 253, 77 N. E. 739. It is an extreme holding to the effect that oil and gas leases so called are a class of their own, that they do not come within the Landlord and Tenant Statutes and that oil and gas are not the subjects of sale or lease until reduced to possession.

It is cited and materially qualified in *Bryson v. Crown Oil Co.*, 185 Ind. 156, 112 N. E. 1, with the intimation that the fugacious character of oil and gas should be discarded when they have no bearing on the issues at bar.

It may be remarked here that this fugacious character of oil and gas is frequently referred to and commented on by the judges through a pardonable vanity to display their learning where it has very little relation to the issue before the Court.

One of the unforeseen conclusions from this analogy, based on the proposition that a lessee cannot sue in ejectment until he has been ousted from possession—is that a lessee who has not tapped the oil cannot maintain ejectment against a party taking the oil. *Kelly v. Keys*, 213 Pa. 295, 110 Am. St. Rep. 547, 62 Atl. 911; *Kolachny v. Galbreath*, 26 Okla. 772, 38 L.R.A.(N.S.) 451, 110 Pac. 902; *Brookshire Oil Co. v. Casmalia Ranch Oil, etc., Co.*, 156 Cal. 211, 103 Pac. 927; *Priddy v. Thompson*, 204 Fed. 955, 123 C. C. A. 277; *Frank Oil Co. v. Belleview Gas, etc., Co.*, 29 Okla. 719, 43 L.R.A.(N.S.) 487, 119 Pac. 260.

In *Kline v. Guaranty Oil Co.*, 167 Cal. 476, 140 Pac. 1, a distinction is made on the mere wording of the lease, the wording being a demise of the land itself and not of the mere right to explore. But thousands of oil leases are worded in the same way and this technical distinction is seldom made.

The general proposition is concisely stated in *Brown v. Spilman*, 155 U. S. 665, 670, 39 L. ed. 304, 15 Sup. Ct. 245 and in *Lanyon Zinc Co. v. Freeman*, 68 Kan. 691, 1 Ann. Cas. 403, 75 Pac. 955, deciding that oil and gas are minerals and belong to the owner of the land so long as they are on it or subject to the owner's control: that "when they escape and go into other lands or come under another's control, the title of the former owner is gone."

Drainage and protection from drainage bring up the fugacious incidents of liquids and gases, but we see no other line of cases where these incidents ought to challenge or change the common law. We do not see why, when the oil is concededly under his land, the lessee should be forbidden to protect his property against one who takes his oil or threatens to take it, by any form of action the same as is allowed to the owner in fee.

CHAPTER 7.

JUDICIAL NOTICE.

Judicial notice is taken everywhere of facts of universal or even general knowledge, of history, of political events and geographic localities and as to incidents peculiar to oil and gas it has been decided:

Manner of Mining—Hazardous.

That courts will take judicial notice: That oil and gas are mined by means of deep drilled wells. *Kemp v. Barr Gas Co.*, 103 Kan. 595, 175 Pac. 988. That pay gas and oil do not exist in every part of the field and that putting down a well is the only final test. *Consumers Gas Trust Co. v. Littler*, 162 Ind. 320, 70 N. E. 363. That oil mining is a hazardous business involving large expenditure and also that the usual royalty is one-eighth. *Garrett v. South Penn Oil Co.*, 66 W. Va. 587, 66 S. E. 741.

That natural gas unlike oil, cannot be stored for a market. *Eastern Oil Co. v. Coulehan*, 65 W. Va. 531, 64 S. E. 836. That natural gas is a necessity. *Jamieson v. Indiana N. Gas, etc., Co.*, 128 Ind. 555, 12 L.R.A. 652, 28 N. E. 76.

Inflammable Character.

Courts take judicial notice of the inflammable, dangerous and explosive traits of natural gas. *Jamieson v. Indiana N. Gas, etc., Co.*, *supra*; *Indiana Natural Gas, etc., Co. v. Jones*, 14 Ind. App. 55, 42 N. E. 487; *Benedict v. Columbus Const. Co.*, 49 N. J. Eq. 23, 23 Atl. 485; *Alexandria Mining, etc., Co. v. Irish*, 16 Ind. App. 534, 44 N. E. 680; *State v. Moore*, 27 Ind. App. 83, 60 N. E. 955, 21 M. R. 401; *Hashman v. Wyandotte Gas Co.*, 83 Kan. 328, 111 Pac. 468. The same as to gasoline. *Whittemore v. Barter Laundry Co.*, 181 Mich. 564, Ann. Cas. 1916C, 818, 52 L.R.A. (N.S.) 930, 148 N. W. 437. And that coal oil is inflammable.

State v. Hayes, 78 Mo. 307; *Texas & N. O. R. Co. v. Bellar*, 51 Tex. Civ. 154, 112 S. W. 323.

That gas alone or mixed with kerosene is highly explosive. *McLawson v. Paragon Ref. Co.*, 198 Mich. 222, 164 N. W. 668. Of the qualities of artificial gas, kerosene, gunpowder and dynamite. *Schmidt v. Union Oil Co.*, 27 Cal. App. 366, 149 Pac. 1014. That abandoned coal mines generate gas. *Check v. Missouri K. & T. Ry. Co.*, 89 Kan. 247, 131 Pac. 617.

Of the noise and odor from a gas or oil well and of everything of common experience to everybody in the locality. *Brown v. Spilman*, 155 U. S. 665, 39 L. ed. 304, 15 Sup. Ct. 245.

Nonjudicial Notice.

They have refused to take judicial notice on the following points:

An oil lease covered oil "or other valuable volatile substances." The Court declined to decide as matter of law that natural gas was or was not a volatile substance. *Ford v. Buchanan*, 111 Pa. 31, 2 Atl. 339.

The Court refused to hold that kerosene was a "burning fluid or chemical oil" in an insurance case. *Mark v. National Fire Ins. Co.*, 24 Hun (N. Y.) 565, affirmed 91 N. Y. 663. Or that kerosene is a refined coal or earth oil. *Bennett v. North British, etc., Ins. Co.*, 8 Daly (N. Y.) 471. The Court will not take judicial notice that kerosene oil (standardized by statute) is explosive. *Wood v. North Western Ins. Co.*, 46 N. Y. 421. Nor that coal dust is explosive. *Cherokee, etc., Min. Co. v. Limb*, 47 Kan. 469, 28 Pac. 181.

The Court does not judicially know that enough natural gas will not seep from the main in the street to the house to cause an explosion. *Mississinewa Min. Co. v. Patton*, 129 Ind. 472, 28 Am. St. Rep. 203, 28 N. E. 1113.

CHAPTER 8.

OIL AND GAS. OIL WELLS AND GAS WELLS. DISTINCTION.

Leases have been granted to search for salt water and oil has been found; to seek for oil but gas was found; and the two minerals have been found together, one workable and the other not, or both workable. Royalty is the usual reserve for the oil and money rent for the gas because of the difficulty of measuring it and the impossibility in most cases of delivering it in kind. This has led to litigation as to what is an oil well and what is a gas well. It is impossible to cover the topic of this chapter confusing in its very nature, except by referring to the decisions many of which will be found to be only a judicial effort to pass justly upon points, little aided by precedent and where no plain proposition of law or of natural justice presents any easy solution of the difficulties.

The courts have generally held that whatever the lessee found was his property as a mere incident to the principal purpose of the lease, but they do not harmonize, nor do they decide any one principle decisive of the right in such cases.

In construing an oil and gas lease, which is ambiguous, the Court will look to the intent of the parties, the surrounding circumstances, and the condition of the business at that time. *Twin Hills Gasoline Co. v. Bradford Oil Corp.*, 264 Fed. 440.

Oil Found in Salt Well.

In *Kier v. Peterson*, 41 Pa. St. 357 the defendant was the lessee of the premises as a salt well. Petroleum was found. The brine could not be utilized until the oil had been separated. A majority of the court held that the oil belonged to the lessee. Thompson, J., in a separate opinion held that the oil was the property of the lessor and that while trover would not lie for it,

the defendant should be held on an accounting. In *Kitchen v. Smith*, 101 Pa. 452, where gas was found under an oil lease the court intimated that the lessee had no right to sell it, citing the *Kier* case with disapproval.

Gas in Well Sunk for Oil.

Where gas is found when oil was expected, it is in equity the same as finding the oil, in so far as extensions are predicated upon such condition. *Hennessy v. Junction Oil & Gas Co.* (Okla.) 182 Pac. 666.

The lease called for a royalty on the oil and a rental on each gas well. The court held that no rental was due where gas was a mere accident to the oil production altho it was utilized to operate the power. *Prichard v. Freeland Oil Co.*, 75 W. Va. 450, L.R.A.1915D 1186, 84 S. E. 945. But on a second appeal the commercial value of the gas was proved and the lessee was held for the rental. 80 W. Va. 787, 93 S. E. 871. This case defines a gas well as one of commercial value, not every well producing gas being in law a gas well.

In *Indiana Natural Gas, etc., Co. v. Wilhelm*, 44 Ind. App. 100, 86 N. E. 86, the lease called for $\frac{1}{3}$ royalty on the oil and \$200 rent for every gas well furnishing gas enough to market. The well produced both oil and gas. It was held that the cost of the well was not to be considered in estimating whether gas existed in marketable quantities, but the cost of marketing the oil was to be considered.

In *Twin Hills Gasoline Co. v. Bradford Oil Corp.*, 264 Fed. 440, is a definition of "casing head gas" finding it to be a component part of oil produced from wet gas and its presence does not make the well a gas well so as to hold the lessee for rent reserved on gas.

Gas Rent when Not Demandable.

Lessee was to pay gas rent if gas found in quantity sufficient to justify marketing. It was necessary to remove the gas to get the oil—this was not marketing the gas, altho it was sold. *Shewalter v. Hamilton Oil Co.*, 28 Ind. App. 312, 62 N. E. 708.

A lessee under an oil and gas lease was to pay an additional rent when oil was produced in pipe line in paying quantity; only gas was found and the defendant was held not liable for the additional rent. *Ball v. Freeman*, 77 W. Va. 156, 87 S. E. 91.

When Impossible to Save Both.

Where the lessees attempted by contract to separate the ownership of the oil product and the gas product and the defendant, holding the oil rights, allowed the gas to escape, contending that he could not otherwise secure the oil, an injunction to the plaintiff was denied. *Arnold v. Garnett Light, etc., Co.*, 103 Kan. 166, 172 Pac. 1012.

Gas Found when Oil Contracted For.

There is a Louisiana case and a Pennsylvania case which illustrate the unusual propositions which may arise under a search for oil where gas only is found. In the Louisiana case, the lessee after doing certain work had the right to do further prospecting for oil. The Court in a very technical opinion, denied that he could prospect for gas. *Cooke v. Gulf Refining Co.*, 127 La. 592, 53 So. 874. Provosty, J., dissented. In the Pennsylvania case the terms of the lease limited it to "petroleum, rock or carbon oil" and for no "other purpose." Gas but not oil was found and the lessees were forfeited out. The Court held that gas and oil were not synonymous terms and that the lessees could not legally get refund of the cost of the gas well which they had drilled and the lessor had taken away. *Truby v. Palmer* (Pa.) 6 Atl. 74; *Palmer v. Truby*, 136 Pa. 556, 20 Atl. 516. There was an equity to the lessees in both these cases, but each failed to make good his contention.

The Truby lease was limited to oil only. In sinking, gas in quantity was struck but no oil. The lessee conceding such fact, a nonliteral compliance with the lease, claimed that the lessor should not be allowed to take the well and make a profit from the gas, without paying the cost of sinking.

The case involves two points:

1. That the finding of the gas was an unavoidable incident in carrying out the express or implied agreement to search for oil.

2. The question of identity in fact without identity in form. It involves not the celebrated ecclesiastical controversy between the meaning of "same" and "similar" but the meaning of "same" in different presentations. Practically every element has its three mechanical forms of solid, liquid and gas. Further the same element may have many shapes. Steam, vapor, snow, hail, ice, mist, and dew are only water in the infinite variety of nature. As to oil it has been judicially decided that "whilst oil and gas are different in character they are yet one because they are unitedly held in the place of deposit." *Ohio Oil Co. v. Indiana*, 177 U. S. 190.

The Court in the *Truby* case says: "It would be a clear perversion of language to hold that gas and oil are synonymous terms." Nevertheless it is no more satisfactory to the legal profession than to the disappointed suitor to kill the equity of a case by the emphatic expression of a truth which is a truth in name only. Money was expended in good faith in the hope of gain to both. That expenditure brought wealth to one and loss to the other the wealth of one being predicated on the other's loss and we are bold to say that justice was not done.

Head Gas.

In a case involving this term it was held error to allow evidence of its meaning when the business was new and usage had not become notorious. *Bubb v. Parker, etc., Oil Co.*, 252 Pa. St. 26. 97 Atl. 114.

Gas from Oil Well.

In a lease calling for a rent if gas was found in sufficient quantities to utilize, the lessee was not allowed to prove that the word "gas" meant gas from a gas well and not gas from an oil well. *Burton v. Forest Oil Co.*, 204 Pa. 349, 54 Atl. 266, 22 M. R. 507.

Injury from Water.

The owner of a well sunk for gas who strikes salt water which ruins the fresh water wells in the neighborhood is liable for dam-

ages, when by casing at a small cost, he could have prevented such injury. *Collins v. Chartiers Valley Gas Co.*, 131 Pa. 143, 17 Am. St. Rep. 791, 6 L.R.A. 280, 18 Atl. 1012.

The effect of water to kill the oil yield of the well is incidentally referred to in *Gird v. California Oil Co.*, 60 Fed. 531, 18 M. R. 45.

Natural Gas Is Not Heat.

It is a fuel. *Emerson v. Com.*, 108 Pa. St. 111, 126. This expression is used in the construction of an Act which was held limited to corporations furnishing a "manufactured product" which natural gas is not.

Gas Used on Premises.

An oil and gas lease called for a fixed rent for each well while the gas was "being used off the premises. The Court held that the lessee was not liable for rent of a gas well not used off the premises, altho it might have been so used. The Court upheld their ruling on the fact that oil was what the parties expected to find and they were allowed to use the gas on the premises. *Ohio Oil Co. v. Lane*, 59 Ohio St. 307, 52 N. E. 791.

Recognized Distinctions between Oil and Gas.

The distinction between oil and gas wells must be recognized. The gas is of no value if the well has no means of utilizing it. Where a lessee might be liable to sink more wells to prevent oil drainage he might not be obliged to sink wells to prevent gas drainage. *McKnight v. Manufacturers' N. Gas Co.*, 146 Pa. 185, 28 Am. St. Rep. 790, 23 Atl. 164, 17 M. R. 429.

A lease was held by the defendant limited to oil. The well produced oil in small tho workable quantity, but struck a strong flow of natural gas which the lessee appropriated by pipes and sold. The Court held that this gas was an incident to the lease like air and water and that defendant was not liable to account for its use. *Wood County Petroleum Co. v. West Virginia Transp. Co.*, 28 W. Va. 210, 57 Am. Rep. 659.

A lessee found oil but not in paying quantities, but he struck

pay gas—the covenants in the lease were practically based on the finding of oil—the lessee was held entitled to the gas. *Eaton v. Wilcox*, 42 Hun (N. Y.) 61.

A well is not an "oil well," within the meaning of a lease reserving to the lessor one-tenth of "all the oil and other minerals," merely because gasoline is produced as a by-product of the gas: lessee was not bound to pay a royalty on the gas. *Wolf v. Blackwell Oil & G. Co.* (Okla.) 186 Pac. 484.

A lease producing only a barrel or so of oil per day but gas in quantity, is a "gas well only." *Ohio Oil Co. v. Burch* (Ind. App.) 124 N. E. 781.

Workable for Both Minerals.

Where it is practical to operate the same well for both oil and gas, it is the duty of the lessee to so work it, but if it can only be worked for oil the lessee is not liable for rental for gas well. *Prichard v. Freeland Oil Co.*, 80 W. Va. 787, 93 S. E. 871; *Locke v. Russell*, 75 W. Va. 602, 84 S. E. 948.

CHAPTER 9.

PROTECTION.

The doctrine of protection is absolutely new and arises from the fluid underground situation of either oil or gas. Both are supposed to emerge through the bore of the well from saturated sands or what might be called natural subterranean tanks and the withdrawal of either the liquid or the gas necessarily induces a flow from all sides to fill the vacuum.

Where the operator has no neighbors the law of protection has no application. But when oil is drawn from near a boundary line it will obviously drain the adjoining tract. The adjoiningers have *prima facie* equal rights. Neither is the sole owner until he reduces the mineral to possession or control.

The question most generally arises between lessor and lessee, the former insisting on more wells to prevent drainage; between lessor and lessee where the lessor owns more ground than he has let to a particular tenant or where he has let to several tenants; between any parties in privity with either lessor or lessee or in some roundabout way between any two adjoiningers.

The doctrine of protection brings on a line of cases, peculiar to itself. There is an implied covenant to sink as many wells as are necessary to protect from drainage. A lessee working two wells from different lessors cannot favor one to the loss of the other. When the leased ground is subdivided, the royalty (under some authorities) is divided among all the owners of the subdivisions, and where land is cut out of the lease for any purpose, it is impliedly for protection to the main tract demised.

The covenant to protect may be express by the terms of the lease, but it is usually implied and the question often does not arise until long after the lease has been delivered.

Territorial Extent.

As to the territorial extent of the protection there are few

decisions, nor has the distance between two wells which will limit the enforcement of protection ever been decided in yards or feet to our knowledge. In the findings of fact in *Barnard v. Monongahela N. Gas Co.*, 216 Pa. 362, 65 Atl. 801, it is stated that one well will drain 10 acres. But no two fields are necessarily alike in this physical fact. The same is stated in *Daughetee v. Ohio Oil Co.*, 263 Ill. 518, 521, 105 N. E. 308. In *Bradford Oil Co. v. Blair*, 113 Pa. 83, 57 Am. Rep. 442, 4 Atl. 218, it was claimed that a well should have been sunk on every five acres.

In *Consumers' Gas Trust Co. v. American Plate Glass Co.*, it is stated that the sinking of a gas well within two miles would materially affect another well at that distance. 162 Ind. 393, 395, 68 N. E. 1020.

A second gas well in the vicinity may destroy the value of the first on account of the pressure. *McKnight v. Manufacturers' N. Gas Co.*, 146 Pa. St. 185, 28 Am. St. Rep. 790, 23 Atl. 164, 17 M. R. 429.

Spacing the Wells.

The doctrine of protection brings in the question of the perfect spacing between wells: It arises when an operator has a large tract out of which he desires to get all the oil possible but does not wish to sink more holes than are necessary; or where there are several operators, who might perhaps better combine on one well than to sink two competition wells. After studying the field, because the right spacing varies in different fields, it requires some mathematical or rather geometrical calculation to determine, not where to spend money, but where to save money by not wasting it.

About 660 feet ($\frac{1}{3}$ of a mile) is usually close enough and in a gas field it should be at least twice that distance.¹ This 660 feet is the limit of protection selected in the Oil Leasing Act.

It becomes material also when a lessor is seeking for a decree against his lessee to compel him to sink a protection well. Certainly a forced protection well should not be so close that, if it

¹ Bacon and Hamor, p. 423.

M. O. R.—3.

were for the lessee's own protection, he would not sink it. In such case he should not be compelled to sink it for the mere protection of his lessor.

Parallelogram.

Where the tract demised was in the form of a parallelogram and—the lease provided for protection for ten rods on one side and eight rods on the other, it was held that the protection included the squares in the corners, by protracting the lines of the outside boundaries of the 8 and 10 rods. *Allison's Appeal*, 77 Pa. 221, 11 M. R. 142.

Implied Covenant.

There is an implied obligation to sink the number of wells necessary to protect the demised tract. *J. M. Guffey Petroleum Co. v. Jeff Chaison T. Co.*, 48 Tex. Civ. 555, 107 S. W. 609; *Powers v. Bridgeport Oil Co.*, 238 Ill. 397, 87 N. E. 381; *Kleppner v. Lemon*, 176 Pa. St. 502, 35 Atl. 109, 18 M. R. 404; *Culbertson v. Iola P. C. Co.*, 87 Kan. 529, Ann. Cas. 1914A, 610, 125 Pac. 81. Its expression in terms adds nothing to the obligation. *Kellar v. Craig*, 126 Fed. 630, 61 C. C. A. 366. And the fact that the lease in terms only demands one well does not exclude this implied covenant. *Harris v. Ohio Coal Co.*, 57 Ohio 118, 48 N. E. 502, 19 M. R. 157.

Successive Wells.

The doctrine of protection was carried far in *Kleppner v. Lemon*, 176 Pa. 502, 35 Atl. 109, 18 M. R. 404. The lease only bound the lessee to sink one well but the Court held that he was bound to sink as many as were necessary to protect the whole demised tract from drainage. He was allowed to hold the well he had bored with a protection of 300 feet but decreed to surrender all the rest of the tract unless he drilled another well. Mitchell, J., strongly dissented.

Electing not to drill the second well, on the second appeal, *Kleppner v. Lemon*, 197 Pa. 430, 47 Atl. 353, he was adjudged to pay full royalty on all the oil he had produced from a well on

an adjoining tract which was assumed to be oil which he would have got by drilling a second well which is a measure of damages allowed only against parties wilfully confusing goods to prevent identification. On rehearing 198 Pa. 581, 48 Atl. 483, 21 M. R. 275, this was conceded to be "harsh and unwarranted" as it certainly was. The damages were reduced to about one-seventh of that royalty by estimating its proportion to the whole area of "drainage" which the Court assumed to know.

In *Colgan v. Forest Oil Co.*, 194 Pa. 234, 75 Am. St. Rep. 695, 45 Atl. 119, 20 M. R. 338, the Court materially qualified this Kleppner decision. The lessee had bound himself to sink one well and had in fact sunk five. The court held that the lessee was "not bound to work at his own cost for this lessor's profit."

When the number of wells is not specified in the lease, the obligation is to sink "sufficient wells to secure to the lessor a reasonable royalty" which seems to be an impracticable sort of a test. *Dinsmoor v. Combs*, 177 Ky. 740, 198 S. W. 58. But the opinion cites many cases on the question of what number of wells will amount to protection which of course must vary indefinitely.

Compulsion by Court to Sink.

A covenant to protect the side lines is a covenant for protection against drainage and requires the lessee to sink offset wells where danger of such drainage appears. *Pelham Petroleum Co. v. North*, 188 Pac. 1069 (Okla.).

The report of this case gives a map of the demised 120 acres showing 9 wells, 6 small producers and 3 dry holes. The Court held that on the question of offset wells, the defendant is not bound to sink such offset wells, unless the draining well was a paying quantity well and that in determining what is a paying quantity well where an offset well is the issue, the whole cost of bringing in such well was to be considered as well as the operating expenses.

The decision is fair and clear in its exposition of abstract principles but the whole evidence shows that no such pay had been found as to justify the inference that an offset well should

be sunk. The report shows, also, and incidentally seems to take into consideration, the fact that all the wells in the neighborhood fell off rapidly from their initial small production. The important suggestion from the case is: How far the Court can make itself the judge of the necessity of sinking offset wells, which is a business, not a legal proposition, until it is apparent that the proof of the existence of a robber well is so conclusive as to compel the judicial overruling of the lessee's private judgment. The biblical reference to laying burdens upon others which cost nothing to those imposing such burdens has a striking application in these offset well cases.

This class of suits suggests some points which we do not find fully considered. Assuming that the robber well takes out enough to make it a paying well as above defined, the offset well would not necessarily save all the oil which was being drained. Presumably each would take one equal half. In such case neither well might continue to pay. And in any event; Is a lessee bound to sink an offset well unless such well, besides saving some of the oil which was being lost, should be expected to pay something over cost to the lessee compelled to sink?

Contracting for Protection.

An oil and gas lease provided that lessors, in any deed to be made by them on a tract neighboring to the tract demised, should prohibit drilling for oil. The Court construed the word "deed" with technical strictness and held that it did not prohibit the granting of a lease to drill. *Test Oil Co. v. La Tourette*, 19 Okla. 214, 91 Pac. 1025.

Limiting Protection by Contract.

The gist of the right to protection is that the lessor ought to receive all the royalty which should accrue from the leased ground and where he has reserved no royalty but has accepted a rental or a bonus as the sole consideration the reason ceases to demand full production for the demised premises, but does not cease as to the right to be protected against foreign drainage.

The parties to the lease may agree to a limited protection.

J. M. Guffey Petroleum Co. v. Jeff Chaison T. Co., 48 Tex. Civ. 555, 107 S. W. 609. But colessess cannot make between themselves any contract as to protection wells which is binding on their landlord. *Arnold v. Garnett Light, etc., Co.*, 103 Kan. 477, 174 Pac. 1027.

Demand. Notice to Lessee.

When one well has been sunk which was all the lease called for in terms, it was the duty of the lessor to notify the lessee that further development was required, before forfeiture could be insisted on. *Dinsmoor v. Combs*, 177 Ky. 740, 198 S. W. 58.

This notice seems to be of common equity demandable before forfeiture in all this line of cases, whether one well has been sunk or more than one well or no well at all. *Monarch Oil, etc., Co. v. Richardson*, 124 Ky. 602, 99 S. W. 668.

Alternative Decree.

There was one lease on two tracts. On one of them pay wells were sunk but none had been drilled on the smaller tract. The defendant was held bound to prospect the smaller tract but should be allowed time after demand and forfeiture was denied. An alternative decree is proper in such cases. *Alford v. Dennis*, 102 Kan. 403, 170 Pac. 1005, following *Howerton v. Kansas N. Gas Co.*, 82 Kan. 367, 34 L.R.A.(N.S.) 46, 108 Pac. 813.

Point of Sinking.

Where the point for sinking the protection well was to be designated by the lessor he has no right of action when he has not designated the place to sink. *McKnight v. Manufacturers' N. Gas Co.*, 146 Pa. 185, 28 Am. St. Rep. 790, 23 Atl. 164, 17 M. R. 429.

Owner's Right to Protect Himself.

Any party has the right to drill on his own land and if his ground is being drained his only remedy is to sink himself. *Barnard v. Monongahela N. Gas Co.*, 216 Pa. 362, 65 Atl. 801.

Anyone has the right to build a line of protection wells near the exterior boundary of his property. *Kelly v. Ohio Oil Co.* 57 Ohio St. 317, 63 Am. St. Rep. 721, 39 L.R.A. 765, 49 N. E. 399.

Risk. Lessee to Decide.

Forfeiture will not be decreed where the success of the offset wells is problematical. *Eastern Oil Co. v. Beatty* (Okla.) 177 Pac. 104. And when judgment is required, as to the number of wells or where they are to be sunk, it is the lessee's judgment which must prevail. *Kellar v. Craig*, 126 Fed. 630, 61 C. C. A. 366; *Colgan v. Forest Oil Co.*, 194 Pa. 234, 75 Am. St. Rep. 695, 45 Atl. 119, 20 M. R. 338.

Collusion. Two Lessors.

A lessee from two adjoining lessors may not evasively increase the royalty from one tract to benefit the other. *Kleppner v. Lemon*, 176 Pa. St. 502, 35 Atl. 109, 18 M. R. 404; *Colgan v. Forest Oil Co.*, 194 Pa. St. 234, 75 Am. St. Rep. 695, 45 Atl. 119, 20 M. R. 338; *Barnard v. Monongahela N. Gas Co.*, 216 Pa. St. 362, 65 Atl. 801; *Culbertson v. Iola P. C. Co.*, 87 Kan. 529, Ann. Cas. 1914A, 610, 125 Pac. 81.

And where lessee was draining the oil under the demised tracts by working under another lease, he was ruled to sink a protection well or submit to forfeiture. *Hughes v. Busseyville O. & G. Co.*, 180 Ky. 545, 203 S. W. 515.

Remedies.

A lease may be cancelled for failure to drill the protection wells which the contract implies or calls for. *Beatty-Nickel Oil Co. v. Smethers*, 49 Ind. App. 602, 96 N. E. 19; *Kleppner v. Lemon*, 176 Pa. 502, 35 Atl. 109, 18 M. R. 404. But the ordinary relief is by suit at law for damages. *Doddridge County Oil & Gas Co. v. Smith*, 154 Fed. 970. Affirmed on cost questions in 173 Fed. 386.

The lessor may recover damages for the failure of the lessee to drill protection wells. The measure of damages is the diminution

of the royalties by reason of such default. But indefinite proof will not sustain a verdict for damages. *Steel v. American Oil Dev. Co.*, 80 W. Va. 206, 92 S. E. 410.

In *Culbertson v. Iola P. C. Co.*, 87 Kan. 529, Ann. Cas. 1914A, 610, 125 Pac. 81, a suit for gas rents or royalties, the plaintiff was allowed to prove what amount of drainage gas had been taken by defendant from wells on adjoining ground—this opinion seems to have allowed recovery on general principles, not intimating how the plaintiff's share of this foreign or drainage gas was ascertained.

Drainage Pending Litigation.

The danger that while the litigation is pending, the gas may be drained by other parties is to be considered on bill for injunction. *Henry Gas Co. v. United States*, 191 Fed. 132, 111 C. C. A. 612.

Wildcat.

In Wildcat, that is unproven oil territory, the necessity for speedy development is not urgent. There is no danger of drainage. *Downey v. Gooch*, 240 Fed. 527.

Expert Evidence.

The evidence of experts is admissible to show what number of wells should be sunk to insure protection. *Culbertson v. Iola P. C. Co.*, 87 Kan. 529, Ann. Cas. 1914A, 610, 125 Pac. 81; *Howerton v. Kansas N. Gas Co.*, 82 Kan. 367, 34 L.R.A.(N.S.) 46, 108 Pac. 813.

Protection of Buildings.

Where no well was to be sunk within 300 ft. of a residence, except with the consent of both parties, their heirs and assigns, the assignee of one part of the excepted circle may drill, lessor consenting with the consent of the assignee of the other parts of the circle. *McFarlane v. Gulf Production Co.* (Tex. Civ.) 204 S. W. 460.

And where there is a limitation that lessee may not drill within a certain distance from buildings on the demised tract neither the lessor nor any person under him has the right to extract oil from the excepted area. *Westmoreland, etc., Gas Co. v. DeWitt*, 130 Pa. 235, 5 L.R.A. 731, 18 Atl. 724; *Lynch v. Burford*, 201 Pa. 52, 50 Atl. 228, 21 M. R. 611.

The protection of buildings is apt to be a trifling incident compared to the value of the land as oil territory and it is only right that the lessor should as in these cases be not allowed to use it to the detriment of his lessee.

Practice.

The danger of drainage of the gas by foreign wells is not a fact which will prevent the remainderman from enjoining work by the life tenant. *Richmond Natural Gas Co. v. Davenport*, 37 Ind. App. 25, 76 N. E. 525.

In a suit against the lessee for failure to protect against drainage of the oil, all the lessors must join. *Steel v. American Oil Dev. Co.*, 80 W. Va. 206, 92 S. E. 410.

CHAPTER 10.

LEASE. INTRODUCTORY.

All the oil fields have been developed by leases.

Taking a broad view of the case and laying aside the question of oil on the public domain, the bulk of the land throughout the United States has always been held in severalty by farmers who were entirely ignorant of its underground values.

Beginning in 1859 it was learned that oil might be found by drilling. One well after another being opened in Pennsylvania and oil becoming gradually a commercial product, of value at first chiefly for hand lamps, later for fuel, coincident with the automobile came gasoline, until now oil with its incidents is one of the great industries of the world.

This latent and unknown possibility of value produced investigation to find the oil. Few farmers had either the money or the faith to do their own drilling. Few capitalists would risk buying the whole farm on the mere possibility of discovering oil, so that naturally and logically a compromise was adopted. The farmer allowed the oil seeker to test his land by lease or lease and option for a nominal or small consideration and was in case of success, either to receive a royalty or to sell at an agreed price. This was eminently fair to both sides.

Out of this proposition, so simple to state, have grown innumerable law suits, on the construction, working and forfeiture of leases. As a matter of course unanimity of interpretation could not be expected but gradually most points have obtained a generally received construction.

Relations of the Parties.

It is held in *Dill v. Frazee*, 169 Ind. 53, 79 N. E. 971; *Rich v. Doneghey* (Okla.) 177 Pac. 86, that the ordinary oil and gas lease does not create the relation of landlord and tenant. This

seems a contradiction in terms, but is consistent with the Indiana cases which it cites. Altho not a lease it is a valid contract enforceable between the parties.

There is no relation of trust and confidence between lessor and lessee: they may deal at arms' length. *Colgan v. Forest Oil Co.*, 194 Pa. 234, 75 Am. St. Rep. 695, 45 Atl. 119, 20 M. R. 338.

A lease is construed to be exclusive of the rights of all others in the possession and working of the property: *Advance Industrial Co. v. Eagle Metallic Co.*, (Pa.) 109 Atl. 771.

Incidental Advantages.

If the lessee obtains incidental or collateral advantages by reason of his operating adjoining tracts, he is entitled to them just as a stranger would be. *Colgan v. Forest Oil Co.*, 194 Pa. 234, 75 Am. St. Rep. 695, 45 Atl. 119, 20 M. R. 338.

CHAPTER 11.

LEASE. THE PARTIES.

By Sole Owner.

Where the lessor is sole owner no question can arise as to his power to lease, unless restrained by some covenant in his title, which is not usual, but where he is one of several cotenants or only a life tenant or himself owner of but an estate for years, complications at once become apparent.

By Life Tenant.

A life tenant cannot give an oil lease—it is the same as opening a new mine. *Marshall v. Mellon*, 179 Pa. 371, 57 Am. St. Rep. 601, 35 L.R.A. 816, 36 Atl. 201, 18 M. R. 548; *Richmond Natural Gas Co. v. Davenport*, 37 Ind. App. 25, 76 N. E. 525; *Barnsdall v. Boley*, 119 Fed. 191.

A tenant for life has the right to the annual produce of his land whether crops or minerals, but no right to commit waste. This rule of the common law therefore allows to the life tenant the royalties accruing from a well opened when he became life tenant but does not allow him to sink a new well, nor to let the land for the like purpose.

This broad proposition of elementary law is a striking instance of the fact that it is impossible to codify the law into abstract propositions. For assuming that without right he does sink a well and finds oil, what is to become of the fruit of his breach or trespass in case he strikes a flowing well and the oil is going to waste? Or, when he owns a life estate and so dare not sink a well, yet the land on all four sides of his tract is being drained, is he to suffer the destruction of both his life estate and the estate of his remainderman? Obviously these

propositions suggest peculiar questions and we can only answer them as they arise.

Elijah Kerns, owner in severalty, gave an oil lease. Later he conveyed the land reserving a life estate. The Court held that the lease was lawful when made, was a part of the life estate and the royalties belonged to him. The case is on the facts complicated and the lower Court denied his right but the above short statement contains the ultimate facts the law on which would seem to be very plain. *Koen v. Bartlett*, 41 W. Va. 559, 56 Am. St. Rep. 884, 31 L.R.A. 128, 23 S. E. 664, 18 M. R. 289.

In *Gerkins v. Kentucky Salt Co.*, 100 Ky. 734, 66 Am. St. Rep. 370, 39 S. W. 444, a well was sunk under lease from the life tenant (who was also one of the remaindermen) with the knowledge and consent of several others of the remaindermen. It struck gas. Suit was brought by the rest of the remaindermen who asked that the well be closed. This was denied. The remaindermen were held entitled to a royalty after the Salt Company had been reimbursed the cost of its expenditures.

So the remaindermen were allowed a royalty out of an estate which had not come into existence and the life tenant apparently forfeited his life estate as a penalty for giving a lease which he had no right to make.

The *Gerkins* case above mentioned is cited in *New Domain O. & G. Co. v. McKinney*, a very recent case in Kentucky, reported in 221 S. W. 245. There the apparent owner had given a lease of the entire premises although he was short in his title one-seventh of the estate. He was one of several heirs and had bought out the others, but one of them, a sister, who had conveyed to him one-seventh, repudiated her deed on account of infancy. She lived in Ohio but the land was in Kentucky. She was between 18 and 21 years of age, an adult in Ohio but an infant in Kentucky. The Court held that the law of the State where the land lay governed and therefore she could deny her deed. But the material point was the measure of damages which she could recover against the lessee. The Court held that she could recover one-seventh which entitled her to the one-eighth royalty, $\frac{1}{5.6}$ of the gross product of the wells up to the date when she began her suit, after which date she was entitled

to recover one-seventh of the net profits made by the lessee and that as a cotenant she had a right to a voice in the management of the lease.

The Court considers the basis upon which these damages are estimated very fully and fairly, allowing to the defendant company all expenses of operation even the overhead expenses such as salaries of its officers.

The lease containing a warranty of the one-seventh which the lessee failed to get, such lessee was entitled to recover one-seventh of the "net value of the one-seventh of the oil produced after the filing of the suit" to be offset against the royalty and if such seventh was less than the royalty the difference should be paid to the lessor.

In *Marshall v. Mellon* the life tenant had given an oil lease reserving rent. No well had been sunk but rent had accrued for which plaintiff sued. The Court held that as a life tenant had no right to give the lease it was void and he could not recover the rent. 179 Pa. 371, 57 Am. St. Rep. 601, 35 L.R.A. 816, 36 Atl. 201, 18 M. R. 548.

The general proposition is that the life tenant cannot rightfully give lease to search for oil on land not already opened for such purposes. This includes tenants by the curtesy and doweragers. But if such a lease is given and oil or gas is found the royalties go to the remaindermen. *Williamson v. Jones*, 43 W. Va. 562, 64 Am. St. Rep. 891, 38 L.R.A. 694, 27 S. E. 411, 19 M. R. 19.

Where the life tenant let a lease and one of the two remaindermen ratified, the nonconsenting remainderman must treat the case as the extraction of mineral by a cotenant. *McIntosh v. Ropp*, 233 Pa. 497, 82 Atl. 949.

Where tenant by curtesy and remaindermen join in a sale or lease, the tenant by curtesy is entitled to all the royalties or proceeds of the fund during his life. *Blakley v. Marshall*, 174 Pa. 425, 34 Atl. 564, 18 M. R. 350; *Deffenbaugh v. Hess*, 225 Pa. 638, 36 L.R.A.(N.S.) 1099, 74 Atl. 608.

On the decease of a life tenant, lessor, the remainderman, may adopt the lease. Distribution of proceeds of the lease in such case considered. *Matlack v. Kline* (Mo.) 216 S. W. 323.

Lease of Cotenant.

A single cotenant has no right to let a lease on the whole land. *Gulf Refining Co. v. Carroll*, 145 La. 299, 82 So. 277. Nor has a majority of the co-owners any greater right. Each has the right to let a lease on his own interest, but it is self-evident that a lessee cannot work an undivided interest in a mine without working the whole interest. Notwithstanding the technical want of right in one, or any number less than the whole of the co-owners, to let the whole premises, it is constantly done and the question then is what are the rights of the nonconsenting cotenants?

Risk of Mining.

The decisions generally agree to the point that the single cotenant takes all the risks of mining. If the mine fails to pay, he must stand the loss and if it makes a profit, he must divide with his co-owners. *McCord v. Oakland Q. Min. Co.*, 64 Cal. 134, 49 Am. Rep. 686, 27 Pac. 863. If he bores for oil and finds it, his cotenants share the profits, but if he sinks a barren well, he stands the whole loss himself. *Williamson v. Jones*, 43 W. Va. 562, 64 Am. St. Rep. 891, 38 L.R.A. 694, 27 S. E. 411, 19 M. R. 19. This last cited case gives a full discussion of the rights of cotenants and also of life tenant and remainderman, all of which parties were involved in that suit.

Accounting Between.

The real issue is reached when it comes to an accounting with the cotenants. In *Early v. Friend*, 16 Grat. (Va.) 21, 78 Am. Dec. 649, 14 M. R. 271, the fair rental value is made the basis of accounting. *Coleman's Appeal*, 62 Pa. 252, 14 M. R. 221, allows the plaintiff cotenant to recover the value of the ore in place. Either of these two rules according to the facts of the case is an equitable basis. Improvements are to be deducted from the oil royalties on such an accounting. *Miller v. Powers*, 184 Ky. 417, 212 S. W. 453.

In accounting for oil taken by a cotenant the measure of damages is the fair market value of the mineral in place and

the royalty may be the test of this value. *McIntosh v. Ropp*, 233 Pa. 497, 82 Atl. 949.

On an accounting for proceeds of oil well in litigation all parties concerned may be brought in on supplemental bill and the Court will adjudicate even questions purely matters at law. *Probst v. Bearman* (Okla.) 183 Pac. 886.

A tenant in common is liable to his cotenants for their shares of the proceeds and, by construction of the Waste Act of West Virginia, he cannot offset the cost of sinking the well. *Dangerfield v. Caldwell*, 151 Fed. 554, 81 C. C. A. 400.

Where two cotenants executed at different times two separate leases to two separate parties, each lease conveying the undivided half interest of the lessor: It was held that each lessee had the right of possession to work for the minerals, but neither had the right to exclusive possession. *Compton v. People's Gas Co.*, 75 Kan. 572, 10 L.R.A.(N.S.) 787, 89 Pac. 1039.

The basis of accounting between tenants in common, where one has taken the oil in good faith under claim of title, is the value of the oil, less the whole cost of production including the drilling. *McNeely v. South Penn Oil Co.*, 58 W. Va. 438, 52 S. E. 480.

A case often referred to is *Job v. Potton*, L. R. 20 Eq. 84; 14 M. R. 329. It decides that the licensee of a cotenant is not a trespasser and that on accounting all costs of mining are to be deducted.

In the case of *Silver King C. Mines Co. v. Conkling Mining Co.*, 255 Fed. 740, a heavy judgment was affirmed against a cotenant working a lode mine. It fairly states the rule of accounting, allowing generally all costs of mining but showing instances where they must be disallowed.

Taking the oil by one joint owner to the exclusion of his cotenant is waste and may be enjoined by the excluded co-owner. *Paxton v. Benedum-Trees Oil Co.*, 80 W. Va. 187, 94 S. E. 472. But a cotenant may ratify the lease of his cotenant and require him to account for his proportion of the royalties.

The Illinois decisions treat a cotenant working or leasing the whole property as little better than a trespasser. *Murray v. Haverty*, 70 Ill. 318, 14 M. R. 325; *Zeigler v. Brenneman*, 237

Ill. 15, 86 N. E. 597. This extreme holding has not been generally followed.

The lease by one cotenant of the whole premises is valid as to his own interest, but void as to his cotenant's interest. Under a later lease by all the cotenants, to a lessee with notice of the first lease, no title passes to the undivided interest first demised.

Zeigler v. Brenneman, 237 Ill. 15, 86 N. E. 597.

Lessee Held Liable.

Where a single cotenant demises the whole property, his lessee is liable with such lessor to the injured cotenants. *McNeely v. South Penn Oil Co.*, 58 W. Va. 438, 52 S. E. 480.

Waiver of Tort.

The cotenant may waive the tort and require an accounting for money had and received when the coal has been sold by his cotenant. *Cecil v. Clark*, 49 W. Va. 459, 39 S. E. 202.

Cotenants' Contracts—When Personal to Him Alone.

Where a cotenant receives delay rentals on his lease, such money is held as his own property and he is not bound to share it with his cotenants. *McNeely v. South Penn Oil Co.*, 58 W. Va. 438, 52 S. E. 480; *Patterson v. Clem*, 79 W. Va. 666, 91 S. E. 654. But if his cotenants had been parties to, or if they ratify his lease, they become entitled to share. *Sommers v. Bennett*, 68 W. Va. 157, 69 S. E. 690.

Rent received by tenant in common in possession, for delay, constitutes no part of the damages for which he is accountable to a cotenant. *McNeely v. South Penn Oil Co.*, 52 W. Va. 616, 44 S. E. 508.

This line of decisions does not refer to the leasing of a cotenant's interest, but to contracts for assignment of his share or treating for options on it. Such dealings are manifestly confined to his own individual interest and his associates have no right to share in them.

Tenants in common of oil rights may subdivide the land into small tracts. *Bronson v. Lane*, 91 Pa. 153.

Husband and Wife. Homestead.

The common-law restrictions on the power of the wife to contract are now in most of the States abolished. To conveyance but not to lease her signature is generally required. If, however, a lease is outstanding at the date of the husband's decease, her dower rights attach to the royalties. *Campbell v. Lynch*, 81 W. Va. 374, 94 S. E. 739. And the funds of the wife advanced to the husband to work a mine, will be protected as her property on an accounting. *Patterson v. Stroecker*, 245 Fed. 732, 158 C. C. A. 134.

An oil and gas lease on a homestead, requires the joint consent of the husband and the wife. *Carter Oil Co. v. Popp* (Okla.) 174 Pac. 747; *Gillespie v. Fulton Oil, etc., Co.*, 140 Ill. App. 147; *McEntire v. Thomason* (Tex. Civ.) 210 S. W. 563; *Haynie v. Stovall* (Tex. Civ.) 212 S. W. 792.

That the wife of a homesteader failed to sign the lease or option, is no ground for cancellation. *Griffin v. Bell* (Tex. Civ.) 202 S. W. 1034. On similar facts injunction was refused against the grantees in the deeds not signed by the wife. *Rumsey v. Sullivan*, 166 App. Div. 246, 150 N. Y. Supp. 287.

The husband as tenant by curtesy is entitled to all the royalties from a coal lease made by his deceased wife. *Caudil v. Wagoner*, 184 Ky. 381, 212 S. W. 422.

It is not against public policy for husband to contract to secure a lease to be executed by the wife. *Robinson v. Smalley*, 102 Kan. 842, 171 Pac. 1155.

Infants. Lunatics.

Neither of such parties can give a valid lease, but their contracts to such effect while voidable are not void. The Court having jurisdiction will usually authorize a lease upon proper showing. *Mallen v. Ruth Oil Co.*, 231 Fed. 845, 146 C. C. A. 41. This case states the peculiar situation of oil land held by infants. A guardian cannot lease beyond the period of infancy. *Lawrence E. Tierney Coal Co. v. Smith's Guardian*, 180 Ky. 815, 203 S. W. 731. On restoration of reason the guardianship ceases. *Bayer, In re*, 80 Wash. 340, 141 Pac. 682. After majority age reached, a minor will be held to her ratification with full

knowledge of a minority lease. *Lasoya Oil Co. v. Zulkey*, 40 Okla. 690, 140 Pac. 160.

A purchaser at guardians sale buys at his own risk, and he will not be protected against a prior disposition of the royalty by the father in his lifetime. *Headley v. Hoopengartner*, 60 W. Va. 626, 55 S. E. 744.

Infants are not estopped by the acts of their guardian in failing to demand for them their full share of the royalty. *Headley v. Hoopengartner*, 60 W. Va. 626, 55 S. E. 744.

Wrong Party.

It is no ground to set aside a lease that the lessee was not the party lessor intended to contract with, there being no misrepresentation or wrong done to the lessor. *Price v. Biggs* (Tex. Civ.) 217 S. W. 236.

Not Covered by General Power.

A will authorizing the executor to lease the land, a farm, was construed to forbid the letting of an oil and gas lease. *Lanyon Zinc Co. v. Freeman*, 68 Kan. 691, 75 Pac. 995.

CHAPTER 12.

LEASE. THE TERM.

In reckoning the duration of the term, the date of the lease should be excluded. *Eastern Oil Co. v. Coulehan*, 65 W. Va. 531, 64 S. E. 836.

Referring in one lease to term of another lease, does not render term uncertain. *Butler v. City of Iola*, 100 Kan. 111, 163 Pac. 652. It is not necessary that a lease should contain a definite term—as long as the wells produce, makes the term. *Busch Everett Co. v. Vivian Oil Co.*, 128 La. 886, 55 So. 564; *Dickey v. Coffeyville, etc., Tile Co.*, 69 Kan. 106, 76 Pac. 398.

The lease usually fixes a definite term of years to be extended if oil or gas is found in paying quantities. If no mineral is found during the fixed term, the paying quantities clause does not extend the fixed term. Or the length of the term may be by the limitation of the time to sink. The duration of the term has in cases been construed as determinable only by the forfeiture clause—forfeiture of course ending the term of any lease.

Where there was a grant of all the coal which was held by a conveyance in fee, a limitation of a certain number of years to remove it, is not inconsistent with this construction. *Greek v. Wylie* (Pa.) 109 Atl. 529.

A lease for a definite term with the right to surrender does not create a tenancy determinable by either party. *Poe v. Ulrey*, 233 Ill. 56, 84 N. E. 46.

Reference to Paying Quantity.

A lease for twelve years “or as long as oil is found in paying quantity” is a lease for twelve years and as much longer as oil is so found. *Eaton v. Wilcox*, 42 Hun (N. Y.) 61.

Where a lease is to endure for the paying quantities term and

drilling has ceased for seven months for want of a market, with no prospect of a market, it becomes ended by its own terms. *Elliott v. Crystal Springs Oil Co.* (Kan.) 187 Pac. 692.

Under the paying quantities and surrender clauses, the lease may become determined as to one well deemed unprofitable and remain valid as to others which pay. *Dickey v. Coffeyville, etc., Tile Co.*, 69 Kan. 106, 76 Pac. 398.

When a natural gas lease was to terminate when natural gas ceased to be used for manufacturing purposes, or when the lessee failed to pay the rent, held that it did not create a tenancy from year to year and that failure to pay did not terminate the contract, but only gave the lessor the right to end it. *Hancock v. Diamond Plate Glass Co.*, 162 Ind. 146, 70 N. E. 149.

A gas lease was based on an annual rent and to cease on the disuse of gas for manufacturing purposes in the locality, or upon failure to pay the rent. The lessee never took possession. It was held to be a lease from year to year and that at the end of any year either party could terminate it, the one by refusing to pay, the other by refusing to accept the rent. *Diamond Plate Glass Co v. Curlless*, 22 Ind. App. 346, 52 N. E. 782, 19 M. R. 682; *Diamond Plate Glass Co. v. Echelbarger*, 24 Ind. App. 124, 55 N. E. 233. Both these cases were overruled by *Hancock v. Diamond Plate Glass Co.*, 162 Ind. 146, 70 N. E. 149, which held that it was not a lease from year to year and failure to pay the rent gave to the lessor only, the right to terminate the contract. The later case of *Hancock v. Diamond Plate Glass Co.*, decided that the rulings cited from 22 and 24 Ind. App. were the law of the case notwithstanding that later, the contrary had been decided.

A lessee cannot declare a well unprofitable when it is not so in fact, altho the lease used words which seemed to allow him to be the sole judge on such issue. The decision is peculiar on this point for the lessee was not making any such assertion but the lessors' assignees were trying to cancel the lease. *Dickey v. Coffeyville, etc., Tile Co.*, 69 Kan. 106, 76 Pac. 398.

Time to Drill.

Allowance of five years time to begin to drill and extending to twenty years upon payment of a specified consideration is not so

unreasonable as to avoid the lease. *Ringle v. Quigg*, 74 Kan. 581, 87 Pac. 724.

A lease for a cash bonus allowing 120 days to commence work with delay rental of \$20 per month was an option to the lessee to work or pay and by his failure to do either the contract was at once at an end. *Risch v. Burch*, 175 Ind. 621, 95 N. E. 123.

A lease for ten years providing that if a well was not sunk in five years, lessee must pay \$40 per annum is a grant for ten years if the rent be paid and the \$40 is not a mere penalty to secure the sinking. *Monfort v. Lanyon Zinc Co.*, 67 Kan. 310, 72 Pac. 784.

The grant of all the oil by deed without limitation of term, second party to drill within a fixed time or pay a rent with the right to surrender by reconveyance is a lease at an annual rental at the option of the lessee only. *Central Ohio Natural Gas, etc., Co. v. Eckert*, 70 Ohio 127, 71 N. E. 281.

On a lease for a fixed term with the paying quantities clause and a delay rental, with a clause that drilling the well should extinguish the rental, the term was held to be extended beyond the fixed period by the drilling of the well. *Prowant v. Sealy* (Okla.) 187 Pac. 235.

A lease ran for the term of two years, a well to be drilled within one year and to run twenty-five years if oil and gas were found with the right to extend the time to drill by paying an acre-age rent for "each year thereafter until a well shall be drilled." The Court held it to be a lease for two years and that the phrase "until a well shall be drilled" meant, until drilled within the term of two years, giving no effect to the words "each year" altho there was only one year to be covered. *Brown v. Fowler*, 65 Ohio 507, 63 N. E. 76.

Lessee Entitled to Notice.

In *Indiana Natural Gas & Oil Co. v. Beales*, 166 Ind. 684, 76 N. E. 520, the lease was for twelve years, lessee to sink or pay delay rental, the lease containing the common paying quantities clause followed by "or the payments hereinafter provided for are made" and the court held that when the twelve years ex-

pired, the lessor could not terminate the lease without giving notice and a reasonable further time to begin operations.

Enjoined Term.

Where the lessee under five years term was wrongfully enjoined from working, it was held that at the close of the litigation, the enjoined time was to be added to the term. *Stahl v. VanVleck*, 18 M. R. 231, 53 Ohio 136, 41 N. E. 35.

CHAPTER 13.

LEASE. THE CONTRACT.

The Demising Clause.

The leases in general use, demise and let certain real estate, or land, describing it by governmental subdivisions, or as a certain placer claim, or by metes and bounds. The words of demise may be of "the right to enter upon" or it may be a letting of the oil and gas to be found. But the first form is preferable. In *Brown v. Wilson* (Okla.) 160 Pac. 94, is an elaborate review of the verbiage of oil and gas leases. This is an overruled case, and is referred to only on the point of such review.

Not Signed by the Lessee.

The signature of the second party, the lessee, is not essential. He is like the grantee in a deed poll which is subscribed by the grantor only. *Lawson v. Kirchner*, 50 W. Va. 344, 40 S. E. 344, 21 M. R. 683; *Chandler v. Hart*, 161 Cal. 405, Ann. Cas. 1913B 1094, 119 Pac. 516; *Indianapolis Natural Gas Co. v. Kibbey*, 135 Ind. 357, 35 N. E. 392, 17 M. R. 677; *Allan v. Guaranty Oil Co.*, 176 Cal. 421, 168 Pac. 884.

Not Witnessed.

An oil and gas lease not witnessed as required by Statute may be valid as an agreement to make a lease. *Allegheny Oil Co. v. Snyder*, 45 C. C. A. 604, 106 Fed. 764.

Blanks.

Where a material blank is left unfilled, the covenant containing the blank has been held void for uncertainty. *Eaton v. Wilcox*, 42 Hun (N. Y.) 61. And that the number of dollars in the

surrender clause being left unfilled, the provision was void. *Riddle v. Keechi Oil & Gas Co.* (Okla.) 176 Pac. 737. And that where the lessee's name was omitted, and the delay blank not filled in, the lessee was entitled to fill in the blanks, but having failed so to do before the lease was recorded, it was, as recorded, void on its face and let in a lease to a new party. *Root v. Townsend* (Ky.) 215 S. W. 936.

Description. Premises Demised.

The lessee was to sink on a single acre to be designated out of one of several adjoining 40 acre tracts, and if he struck oil on this single acre, he was to become lessee of one whole 40 acre tract. The court held that the 40 acre tract out of which the single acre had been selected was the tract to be covered by the promised lease. *Stahl v. Van Vleck*, 18 M. R. 231, 53 Ohio, 136, 41 N. E. 35.

A lease in the ordinary form covers a well already drilled on the premises. *Kemp v. Bar Gas Co.*, 103 Kan. 595, 175 Pac. 988.

Parol evidence cannot add land not covered by the contract in the absence of the allegation of fraud or mistake. *Duffield v. Hue*, 17 M. R. 253, 129 Pa. 94, 18 Atl. 566.

Where the issue is as to the ground necessary to operate an oil well, it is a question of fact to be decided by the jury. *Moore v. Decker* (Com. App. Tex.) 220 S. W. 773.

Where a lease was given on two separate tracts the lease being assigned as to one of the tracts it continues to be one lease and the drilling of the well on one of the tracts protects both of them. *Gypsy Oil Co. v. Cover* (Okla.) 189 Pac. 540.

Papers Construed as Leases.

An agreement for a lease may be in fact the lease itself. *Chicago & A. Oil, etc., Co. v. United States Petroleum Co.*, 12 M. R. 570, 57 Pa. 83.

Mineral contracts partaking of the nature of sale or demise will be treated as leases. *Spence v. Lucas*, 138 La. 763, 70 So. 796; *Cooke v. Gulf Refining Co.*, 135 La. 609, 65 So. 758.

A paper which "demises" and leases land for a fixed term to work for oil, conveys a present interest—purporting to distinguish the lease from that construed in *Brookshire Oil Co. v. Casamalia, etc., Dev. Co.*, 156 Cal. 211, 103 Pac. 927, where it was held that no present title passed. *Chandler v. Hart*, 161 Cal. 405, Ann. Cas. 1913B 1094, 119 Pac. 516.

A conveyance containing both the words of a deed of grant, and of a lease covering coal, salt, oil and other mineral rights on land known to have produced oil, was construed with reference to the known condition at the time of its delivery and by the construction of the parties, to be a lease and not a conveyance. *McMillin v. Titus*, 222 Pa. 500, 72 Atl. 240.

In *Clay v. Palmer* (Nebr.) 177 N. W. 840, a very informal contract to allow the working of a lake for Potash to be extracted from its solution was construed to be practically a lease.

Legal Status of the Lease.

There is little agreement or consistency in the decisions as to the legal classification of an oil lease.

Many cases call it an incorporeal hereditament. Perhaps as many call it an estate in land, or in other words a corporeal hereditament. It is constantly confounded with or distinguished from a license.

Funk v. Haldeman, 53 Pa. 229, is a case often cited on the subject. There had been given by deed the right to explore for oil, for a bonus paid and a royalty. The Court held it was neither a sale nor a lease of the mineral but a license coupled with an interest, not revokable except on breach. This made it an incorporeal hereditament.

When a license is irrevocable and is coupled with an interest, we fail to see what remains to practically distinguish it from a lease except that it is not assignable and perhaps not divisible. Otherwise it is a lease to all intents and purposes.

The opinion cites *Lord Mountjoy's case*, 9 M. R. 175, a short but leading case which enumerates the incidents of a license. This case decided during the reign of Elizabeth, is variously reported, and a curious history of it is given in *Grubb v. Bayard*, 2 Wall. Jr. 81, Fed. Cas. No. 5,849, 9 M. R. 199. This *Grubb*

case held that the grant of the right to take the iron ore, altho without stint, was only a license. To the same effect is *Johntown Iron Co. v. Cambria Iron Co.*, 32 Pa. 241, 72 Am. Dec. 783, 9 M. R. 226. The case of *Rynd v. Rynd Farm Oil Co.*, 63 Pa. 397, cites *Funk v. Haldeman* cautiously and altho involving the construction of an important oil lease is confined to the technical point as to whether ejectment was the proper form of action.

An incorporeal hereditament is something related to real estate which is inheritable, but not tangible. Instances given, are, right of common, rents and annuities supported on land. It may include certain easements.

Among the cases which call it an incorporeal hereditament are *Robinson v. Smalley*, 102 Kan. 842, 171 Pac. 1155; *Huston v. Cox*, 103 Kan. 73, 172 Pac. 992; *Walla Walla Oil, etc., Co. v. Vallentine*, 103 Wash. 359, 174 Pac. 980; *State v. Welch* (Okla.) 184 Pac. 786, 787; *Payne v. Neuval*, 155 Cal. 46, 99 Pac. 476; *White v. Green*, 103 Kan. 405, 173 Pac. 974.

But the cases agree that it is more than a license and that it creates an interest in the land. *McKean Natural Gas Co. v. Wolcott*, 254 Pa. 323, 98 Atl. 955, and that however described or defined, it is property and as such is subject of transfer with the right of protection. *Shaffer v. Marks*, 241 Fed. 139; *McEntire v. Thomason* (Tex. Civ.) 210 S. W. 563. It does not convey a vested interest in the oil, but does convey a vested right to find the oil with the right to possession in the search for it. *Lindlay v. Raydure*, 239 Fed. 928; *Rawlings v. Armel*, 70 Kan. 778, 79 Pac. 683; *Beatty Oil & Gas Co. v. Blanton*, 245 Fed. 979; *Brennan v. Hunter* (Okla.) 172 Pac. 49.

A case in West Virginia takes a practical view of this subject. Speaking of the various forms of leases it says: "such dissimilarity as may seem apparent is really inconsequential—they are in fact the same and not essentially different." *Johnson v. Armstrong*, 81 W. Va. 399, 94 S. E. 753, 755.

Freehold Character.

In determining the freehold character of the lease, it has been held that it is not a conveyance of real estate—it is a chattel real. *Duff v. Keaton*, 33 Okla. 92, 42 L.R.A. (N.S.) 472, 124 Pac. 291. *Tupeker v. Deaner*, 46 Okla. 328, 148 Pac. 853. That

the lease itself is personal property and therefore not covered by the devise of all "lands and premises" owned by the testator. *Wagner v. Mallery*, 169 N. Y. 501, 62 N. E. 584. And that an oil lease altho its grant is of an incorporeal hereditament is a contract concerning lands within the recording Acts. *McNish v. Stone*, 17 M. R. 22, 152 Pa. 457, 25 Atl. 732 note. And that a lease for a fixed term and as long as gas or oil is found in paying quantities conveys a freehold estate. *Daughetee v. Ohio Oil Co.*, 263 Ill. 518, 105 N. E. 308.

What the Lease Carries. Title to the Mineral.

The following citations define the status of the lessor and the lessee and the ownership of the minerals sought for in various language. Their substance is that the lease itself does not convey title to the oil or gas in place. That there is only the privilege to explore and search but that the mineral when found becomes the property of the lessee and the estate vests in him. Especially, that the lessee's right becomes absolute after sinking the well and finding the oil or gas. One or more of them hold that the lease is a conveyance of mineral rights subject to defeasance by failure to drill or to pay the rentals.

Oil and gas leases are in a class by themselves, in the nature of licenses conveying the mineral, conditioned on its being found, and when found, the right to produce it becomes a vested right. *Dickey v. Coffeyville, etc., Co.*, 69 Kan. 106, 76 Pac. 398; *Kansas Nat. Gas Co. v. Neosho County Com'rs*, 75 Kan. 335, 89 Pac. 750.

Right of Action.

The lessor has a right of action for breach of the covenants of the lease when it arises, without waiting till the end of the term. *Daughetee v. Ohio Oil Co.*, 263 Ill. 518, 105 N. E. 308.

The oil lease in general use conveys no title to the oil in place to the lessee. It is only a grant of the privilege to explore. The lease confers only an inchoate right until oil or gas is found, when the title becomes vested. *Frank Oil Co. v. Belleview Gas, etc., Co.*, 29 Okla. 719, 119 Pac. 260, 261, 43 L.R.A.(N.S.) 487; *Backer v. Penn. Pub. Co.*, 162 Fed. 627, 89 C. C. A. 419; *Smith*

v. Root, 66 W. Va. 633, 30 L.R.A.(N.S.) 176, 66 S. E. 1005; *Ulrey v. Poe*, 134 Ill. App. 298; *Munsey v. Marnet Oil, etc., Co.* (Tex. Civ.) 199 S. W. 686; *Headley v. Hoopengartner*, 60 W. Va. 626, 55 S. E. 744; *McGraw Oil & Gas Co. v. Kennedy*, 65 W. Va. 595, 28 L.R.A.(N.S.) 959, 64 S. E. 1027. An oil lease is the conveyance of mineral rights subject to defeasance by failure to drill or pay the rentals. *Key v. Big Sandy Oil, etc., Co.* (Tex. Civ.) 212 S. W. 300; *Jackson v. Pure Oil Operating Co.* (Tex. Civ.) 217 S. W. 959.

An oil lease in consideration only of the future royalties vests no present title and a completion of a nonproductive well, does not operate to carry the title to the lessee. *Steelsmith v. Gartlan*, 45 W. Va. 27, 44 L.R.A. 107, 29 S. E. 978, 19 M. R. 315.

The lessee of the right to mine for oil has a vested interest, a right of possession of all the necessary surface and holds a corporeal hereditament. *Duke v. Hague*, 107 Pa. 57; *Chicago & A. Oil & Mining Co. v. United States Petroleum Co.*, 57 Pa. 83, 12 M. R. 570.

Property Right of Lessee.

An oil lease gives only the right to search for the oil, the right of exploration—if oil not found, no estate vests in the lessee, but when founded on a consideration is to be protected from forfeiture. *Lowther Oil Co. v. Miller-Sibley Oil Co.*, 53 W. Va. 501, 97 Am. St. Rep. 1027, 44 S. E. 433, 22 M. R. 656; *Calhoon v. Neely*, 201 Pa. 97, 50 Atl. 967, 21 M. R. 754; *Brunson v. Carter Oil Co.*, 259 Fed. 656; *Steelsmith v. Gartlan*, 45 W. Va. 27, 44 L.R.A. 107, 29 S. E. 978, 19 M. R. 315; *Carr v. Huntington Light, etc., Co.*, 33 Ind. App. 1, 70 N. E. 552.

A lessee has no property in the oil until it is reduced to possession. *Wagner v. Mallory*, 169 N. Y. 501, 62 N. E. 584, 22 M. R. 42; *Huggins v. Daley*, 20 M. R. 377, 99 Fed. 606, 40 C. C. A. 12, 48 L.R.A. 320; *Watford Oil & Gas Co. v. Shipman*, 233 Ill. 9, 122 Am. St. Rep. 144, 84 N. E. 53; *Kansas Nat. Gas Co. v. Board of Com'rs of Neosho County*, 75 Kan. 335, 89 Pac. 750.

A mining lease is not equivalent to a sale of the ore in place. *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503, 61 L. ed. 460, 37 Sup. Ct. 201; *Nelson v. Republic Iron, etc., Co.*, 240 Fed. 285, 153 C. C. A. 211; *United States v. Biwabik Min. Co.*, 247

U. S. 116, 62 L. ed. 1017, 38 Sup. Ct. 462. Nor does the payment of a bonus make it such a sale. *Moore v. Sawyer*, 167 Fed. 826; *Headley v. Hoopengartner*, 60 W. Va. 626, 55 S. E. 744.

Protection and Drainage.

When the parties to the lease reach the items of drainage and protection, then a necessary distinction does arise between classes of leases, but protection and drainage, should have nothing to do with the legal construction of the lease: it is a matter that arises afterwards in controversies with adjoining oil seekers.

Or and Unless Leases.

A distinction has been expressed in several cases between what the Court calls "Or leases" and "Unless leases," based on the form of the terms used. One requires work *unless* a rent is paid, the other requires the lessee to work or pay rent.

Under the "Unless" leases, as long as the rents are paid, lessee has an option to continue the lease; failure to pay the rent terminates the contract. Under the "Or" lease failure to pay does not terminate the contract. *Northwestern Oil & Gas Co. v. Branine* (Okla.) 175 Pac. 533. *Shaffer v. Marks*, 241 Fed. 139, reviewing many cases, holds that both forms authorize forfeiture, unless one of the alternations is performed, but such forfeiture may be relieved against when equitable conditions exist. And this "Or and Unless" distinction is referred to in *Hopkins v. Zeigler*, 259 Fed. 43. *Smith v. Guffey*, 202 Fed. 106, 120 C. C. A. 436, considering two leases of slightly variant terms as to their duration, considered the difference as negligible.

The case of *Garfield Oil Co. v. Champlin*, (Okla.) 189 Pac. 514, states the distinction between an "or lease" and an "unless lease." Under an "or lease" the lessee surrenders upon payment of the agreed consideration and on failure to surrender becomes bound to the payment of the rent. Under an "unless lease" the lease automatically terminates by the failure to pay the rent. In *Brunson v. Carter Oil Co.*, 263 Fed. 935, this artificial distinction is deprecated as too refined. This *Garfield* case reviews many of the decisions on the usual points in oil cancellation cases.

CHAPTER 14.

LEASE. CONSTRUCTION.

Whatever is Implied

in a lease is as effectual as what is expressed; implication being only another name for intention and everything is implied which is necessary to accomplish what is expressed. *Brewster v. Lanyon Zinc Co.*, 140 Fed. 801, 72 C. C. A. 213.

An express covenant to perform certain acts implies a covenant to refrain from performance of other acts which operate to defeat performance of the express covenant. *Millan v. Bartlett*, 69 W. Va. 155, 71 S. E. 13.

Ignorance of the contents of the lease is of itself no sufficient excuse for noncompliance. *Garfield Oil Co. v. Champlin* (Okla.) 189 Pac. 514.

The Written Insertions Control

the printed form when they are inconsistent. *Producers' Oil Co. v. Snyder* (Tex. Civ.) 190 S. W. 514; *Johnston v. Shaffer* (Okla.) 176 Pac. 901; *Duffield v. Hue*, 129 Pa. 94, 18 Atl. 566, 17 M. R. 253.

Lessor Favored in Construction.

Oil or gas leases are to be construed favorably to the lessor. *Aycock v. Reliance Oil Co.* (Tex. Civ.) 210 S. W. 848; *Curtis v. Harris* (Okla.) 184 Pac. 574; *Frank Oil Co. v. Belleview Gas Co.*, 29 Okla. 719, 119 Pac. 260, 43 L.R.A.(N.S.) 487; *Owens v. Corsicana Pet. Co.* (Tex. Civ.) 169 S. W. 192; *New State Oil & Gas Co. v. Dunn* (Okla.) 182 Pac. 514; *Rechard v. Cowley* (Ala.) 80 So. 419; *Hitson v. Gilman* (Tex. Civ.) 220 S. W. 140; *Garfield Oil Co. v. Champlin*, 189 Pac. 514 (Okla.)

Oil leasing companies prepare their own forms, and their

leases are to be construed strictly against them—in favor of the lessor. *Ohio Oil Co. v. Burch* (Ind. App.) 124 N. E. 781; *Prowant v. Sealy* (Okla.) 187 Pac. 235.

General Rules of Construction.

In the construction of oil and gas leases the court will discard ambiguous or contradictory provisions and determine the true meaning of the contract if possible. *Stahl v. Illinois Oil Co.*, 45 Ind. App. 211, 90 N. E. 632; *Ohio Oil Co. v. Detamore*, 165 Ind. 243, 73 N. E. 906. The words “or” and “and” will be read to mean what was intended. *Bettman v. Harness*, 42 W. Va. 433, 36 L.R.A. 566, 26 S. E. 271, 18 M. R. 500.

Where the language of a contract is doubtful, that construction should be preferred, which makes it fair and such as prudent men would naturally execute. *Withington v. Gypsy Oil Co.* (Okla.) 172 Pac. 634. But inclining against the covenantor. *Ohio Oil Co. v. Burch* (Ind. App.) 124 N. E. 781. And not allowing a party to take advantage of his own wrong. *Andrews v. Andrews*, 256 Pa. 24, 100 Atl. 521.

On points of practice and evidence common to all leases, it is held that the written terms cannot be contradicted by parol where not ambiguous. *Wright v. Gillespie*, 261 Fed. 46. And that their terms cannot be questioned by a stranger to the contract. *Indianapolis Natural Gas Co. v. Kibbey*, 135 Ind. 357, 35 N. E. 392, 17 M. R. 677. And that where there was an understanding contrary to the terms of the lease, the burden of proof to show such fact was upon the party alleging it. *Doane v. Rising Sun M. Co.* (Ark.) 213 S. W. 399.

When the lease covers other minerals the rules for consideration of a lease of fugacious minerals, do not strictly apply. *McCullough v. Smith*, 243 Fed. 823, 156 C. C. A. 335.

Time is of the essence of the lessee's contract to sink or pay rent. *Garfield Oil Co. v. Champlin*, 189 Pac. 514 (Okla.). See page 82.

Parties Construction.

Where the parties themselves construed the lease that it called

for the rent in advance the Court held them to their own construction. *Bearman v. Dux Oil, etc., Co.* (Okla.) 166 Pac. 199. But in *Nelson v. Republic Iron, etc., Co.*, 240 Fed. 285, 153 C. C. A. 211, it was ruled that the lessor was not bound by his interpretation of the meaning of the reservation of the rents and royalties.

Where the terms are clear it cannot be varied by the subsequent conduct of the parties. *Jameson v. Chanslor-Canfield, etc., Oil Co.*, 176 Cal. 1, 167 Pac. 369. This case so decides, but it is obvious that it is one of those rules which neither courts nor their clientage ever live up to.

The parties own construction of the lease, in case of doubt, will be accepted by the Court. *Balfour v. Russell*, 18 M. R. 202, 167 Pa. 287, 31 Atl. 570; *Ohio Oil Co. v. Burch* (Ind. App.) 124 N. E. 781. Even where the language used might strongly suggest another interpretation. *Pittsburg, etc., Brick Co. v. Bailey*, 76 Kan. 42, 12 L.R.A.(N.S.) 745, 90 Pac. 803. But not where the lease clearly reads otherwise. *Diamond Plate Glass Co. v. Tennell*, 22 Ind. App. 132, 52 N. E. 168. The acts of the parties are to be looked to in construing an oil lease. *Stahl v. Illinois Oil Co.*, 45 Ind. App. 211, 90 N. E. 632. Where the lease provides for written notice of certain things to the lessor, notice in fact may be shown by the acts of the parties in relation to the premises. *May v. Hazelwood Oil Co.*, 152 Pa. 518, 25 Atl. 564.

Federal Courts.

The Federal Courts should follow the local law in the construction of oil and gas leases. State Court decisions establishing rules of property on oil leases are binding on the Federal Court. *Washburn v. Gillespie*, 261 Fed. 41. But their views on equitable principles are only persuasive. *Downey v. Gooch*, 240 Fed. 527; *Smith v. Guffey*, 202 Fed. 106, 120 C. C. A. 436; *Shaffer v. Marks*, 241 Fed. 139.

Civil Law Construction.

Jennings-Heywood Oil Syndicate v. Houssiere-Lalreille Oil

Co., 119 La. 793, 44 So. 481, was a case on the construction of an oil lease under the civil law. The Court being divided, delivered several opinions, reversing on rehearing its first decision and finally deciding that:

The lessee being at liberty to drill or not to drill at his election, there was no contract on this point binding on the lessee. If there was a contract, it was broken by failure to sink. That an option must be exercised within the time limited, not even vis major excusing: that a fire in the oil field would excuse working, but not delay in making tender of money.

That the delay rental should have been paid in advance and that delay rental clauses may be abrogated by consideration of other terms in the lease demanding development.

The case is instructive as a discussion of some fundamental propositions under the Code Napoleon, but not decisive of any material point and on the whole coincides with the common-law conclusions.

Wildcat Territory.

The lessee on new territory where oil has never been known has the right to demand long time and liberal terms. Where there is no fraud or imposition courts have no right to set aside an oil lease in terms agreed to by both parties. *Ringle v. Quigg*, 74 Kan. 581, 87 Pac. 724.

In construing an oil lease, the Court must place itself in the position of the parties. The contract in this case was for the development of Wildcat property. *Prowant v. Sealy* (Okla.) 187 Pac. 235.

M. O. R.—5.

CHAPTER 15.

LEASE. CONSIDERATION.

The main consideration of the vast number of ordinary leases is the payment of rent but when we come to oil and gas leases it is complicated by various peculiar incidents. Many of them express a money consideration usually nominal for the mere right to enter and work. Where this sum is more than nominal it is called a bonus. Then come the covenants to drill, to pay royalty, with provisions for delay rentals, forfeiture, protection against drainage, reservation of surface right and others not usual in farm or house leases.

Where there is a binding covenant of any sort imposing rent, royalty, or a duty to do something, in other words a promise compellable to be performed, there is no need to express a formal consideration for the lease. The covenant to pay or the covenant to perform is a consideration of itself. But an express consideration in an oil and gas lease is often recited usually to make a *prima facie* showing against its being unilateral.

An oil lease is only a license to enter and develop, for which license a consideration is necessary. *Hitson v. Gilman*, 220 S. W. 140 (Tex. Civ.)

Exploration and development are the controlling consideration for an ordinary oil and gas lease. *Advance Oil Co. v. Hunt* (Ind. App.) 116 N. E. 340.

The payment of a valuable consideration does not relieve the lessee from the performance of the express covenants of the lease. *Aycock v. Reliance Oil Co.* (Tex. Civ.) 210 S. W. 848; *Emery v. League*, 31 Tex. Civ. 474, 72 S. W. 603. But the further consideration of development to be done, is not demandable where a present consideration has been paid for the lease. *Chandler v. Hart*, 161 Cal. 405, Ann. Cas. 1913B 1094, 119 Pac. 516.

Where a lease is delivered in exchange or lieu of a prior lease the consideration of the first lease holds good for the second. *Johnson v. Russell* (Tex. Civ.) 220 S. W. 352.

The \$1 Consideration.

The agreement to expend money in sinking supports the \$1 consideration, notwithstanding the presence of the surrender clause. The opinion quotes exhaustingly the decisions on the \$1 consideration clause in oil and gas leases. *Lindlay v. Raydure*, 239 Fed. 928, affirmed *Raydure v. Lindlay*, 249 Fed. 675, 161 C. C. A. 585. The cases of *Rechard v. Cowley* (Ala.) 80 So. 419, and *Lovett v. Eastern Oil Co.*, 68 W. Va. 667, Ann. Cas. 1912B, 360, 70 S. E. 707 also hold good the \$1 consideration. *Rich v. Doucghy* (Okla.) 177 Pac. 86 also, is a full case on the point and overrules *Brown v. Wilson*, 58 Okla. 392, L.R.A.1917B 1184, 160 Pac. 94.

The consideration of \$1 held to cover not only the grant of the term, but the privilege of extending the time for drilling by paying the stipulated price. *Allegheny Oil Co. v. Snyder*, 106 Fed. 764, 45 C. C. A. 604. Under Ohio decisions oil and gas leases carry an implied covenant to drill, operate and protect, which covenant the lessor may enforce by action. *Id.*

The consideration of \$1 held to make the contract of lease mutual and to extend to all the clauses of the lease. *Brown v. Fowler*, 65 Ohio 507, 63 N. E. 76. It supports the fixed term and the delay rental clause. *Pittsburgh Vitrified, etc., Brick Co. v. Bailey*, 76 Kan. 42, 12 L.R.A.(N.S.) 745, 90 Pac. 803. And the surrender clause. *Magnolia Petroleum Co. v. Saylor* (Okla.) 180 Pac. 861.

The right to surrender does not avoid the legal effect of the paid consideration of one dollar. *Poe v. Ulrey*, 233 Ill. 56, 84 N. E. 46. And the consideration of one dollar actually paid will support not only the option to develop but the further condition of a delay rental. *Hitson v. Gilman* (Tex. Civ.) 220 S. W. 140.

In Oklahoma it was held that the \$1 consideration supported the clause giving the period to complete the well and no other stipulation in the lease. *Brown v. Wilson*, 58 Okla. 392, 160 Pac. 94, L.R.A.1917B, 1184. But that case has been repeatedly over-

ruled. *McCray v. Miller* (Okla.) 186 Pac. 1089. In *Northwestern Oil & Gas Co. v. Branine* (Okla.) 175 Pac. 533, it is held that the Court has no right to fractionize the consideration and say that it supports any particular covenant to the exclusion of another. *Rich v. Doneghey* (Okla.) 177 Pac. 86, 99; *Magnolia Petroleum Co. v. Saylor* (Okla.) 180 Pac. 861, and *Maud Oil Co. v. Bodkin* 180 Pac. 959 (Okla.) follow the *Branine* case and decide among other points that the down payment or cash bonus consideration in the lease support all its covenants and that the surrender clause does not subject the lease to cancellation. *McKay v. Lucas* (Tex. Civ.) 220 S. W. 172.

The consideration of \$1, is passed upon in a recent Texas case, *McKay v. Tally* (Tex. Civ.) 220 S. W. 167, holding it to be valid: That even if not paid the lease may be construed as an enforceable promise to pay it and the Court refer to the general principle that the recital of a consideration in a deed precludes the grantor from attacking the deed as a muniment of title. In the further discussion of the subject they say that if the consideration of one dollar was inserted "simply to conform to a belief that a written contract must name some sum, it may be regarded as a consideration in name only, and in that sense nominal, and not upon agreement," which quotation leaves the whole subject in a chaotic and unsatisfactory condition.

It is followed by *McKay v. Kilcrease* (Tex. Civ.) 220 S. W. 177, which later case adds that other considerations not recited, may be proved to aid the one dollar named.

Our own conclusions from the many decisions on the point are: That the \$1 consideration supports the lease as the grant of an estate for years and all its terms including the right of election to pay delay rentals and the surrender clause. And will defeat efforts at forfeiture or cancellation based on alleged want of consideration. But that it is not good to sustain a plea for nondevelopment or the right to lie idle if such claim is not supported by some other clause in the lease tending necessarily to that conclusion and that it is not sufficient to support a decree for specific performance. That its payment need not be proved and its nonpayment may not be shown, and that it has nothing to do with the defense of inadequate consideration

which is a point practically confined to bills for rescission based on fraud.

Parol evidence will not be allowed to show that the \$1 had not been paid. *Lindlay v. Raydure*, 239 Fed. 928; *Contra*, *Raines v. Dunson*, 145 La. 239, 82 So. 690.

The civil law unlike the common law does not construe the nominal sum of \$1 as a substantial consideration. *Murray v. Barnhart*, 17 La. 1023, 42 So. 489.

Inadequate Consideration.

Nolan v. Young (Tex. Civ.) 220 S. W. 154, was a case where an option agreement or oil lease was attacked on the allegation that the consideration was inadequate. It was held that the Court properly refused to allow proof that the \$10 paid was not considered the real consideration and that the sole inducement for the lease was to secure the sinking of a test well. The case is practically confined to that one point the suggestions of fraud not being proven. The Court admits that there has been lack of harmony in the decisions on this point but claims the weight of authority to be in favor of the validity of the paper and of its consideration.

The distinction between a valuable consideration and an inadequate consideration is considered in *Hitson v. Gilman* (Tex.) 220 S. W. 140 and *Hunter v. Gulf Prod. Co.* (Tex. Civ.) 220 S. W. 163. Inadequacy of consideration becomes material in cases of alleged fraud while the valuable consideration though small is sufficient to bring the lease within the definition of a contract.

Promise When Not Consideration.

A promise may support a promise but where it is clear that the lessee had no intent to perform his promise to drill, and there is no specific obligation to pay a delay rental, the contract is without consideration. And on the facts of the case, the payment of the delay rental was held to be no estoppel. *Hitson v. Gilman* (Tex. Civ.) 220 S. W. 140.

Mere inadequacy of consideration is not of itself ground to

avoid an oil and gas lease. *Brewster v. Lanyon Zinc Co.*, 140 Fed. 801, 72 C. C. A. 213; *Lindlay v. Raydure*, 239 Fed. 928.

Protection Covenants.

Covenants to not sink, or to exclude certain ground from being drilled, are of value in natural gas fields and constitute valuable considerations. *Simpson v. Pittsburgh Plate Glass Co.*, 28 Ind. App. 343, 62 N. E. 753.

CHAPTER 16.

LEASE. BONUS.

Bonus as Consideration for Lease.

Rent or royalty is the almost universal and generally the sole real consideration of any sort of lease. Such a lease is based upon a promise to do, pay or perform. But the lessee may advance a money consideration for the lease and where such advance is not a mere nominal sum this advance or bonus seems to release the implied covenants usually imposed on the lessee. The lessor no longer relies on promises to be performed in the future but has value received in the shape of pay.

In *Griffin v. Bell* (Tex. Civ.) 202 S. W. 1034, the lessee had paid a bonus of \$70 for the lease. The Court held that it was a valuable and adequate consideration to support all the grants of the lease: that where there is a money consideration paid there is no implied covenant to sink and that the fact that the lessee did not intend to drill and was holding lease for speculation was no ground to cancel it.

This last proposition is counter to many cases where no bonus had been paid but the reasoning of the opinion is strong and but for the fact that the bonus was very small, agrees with the common idea of the legal profession that men have the right to contract as they please, barring agreements contrary to public policy or otherwise forbidden.

The payment of a bonus supports every provision of the lease. *Shaffer v. Marks*, 241 Fed. 139; *Carter Oil Co. v. Tiffin* (Okla.) 176 Pac. 912; *Northwestern Oil & Gas Co. v. Branine* (Okla.) 175 Pac. 533; *Magnolia Petroleum Co. v. Saylor* (Okla.) 180 Pac. 861.

Sufficiency of Bonus, Question of Fact.

Whether the \$70 cash paid for an option was sufficient to make

an adequate consideration, is a question of fact for the jury if the contract is not unilateral on its face. *Griffin v. Bell* (Tex. Civ.) 202 S. W. 1034.

When a lessee company agreed to pay a bonus in case its proposed well proved a success and assigned the lease, it was held liable for the bonus, the condition having been fulfilled. *Gem Oil Co. v. Callendar* (Okla.) 173 Pac. 820.

The general manager of an oil company has the right to meet emergencies and his action was approved in changing the bonus of a sinking contract. *Hinton v. D'Yarmett* (Tex. Civ.) 212 S. W. 518.

CHAPTER 17.

LEASE. UNILATERAL. MUTUALITY.

Oil and gas leases have been continually attacked on the allegation of being unilateral. This is one of the forms of alleging want of consideration, as a violation of the universally received definition of a contract, to wit: an agreement or promise to do, or not to do something for a consideration.

Where they are unilateral they are to be construed strictly. *Bearman v. Dux Oil & Gas Co.* (Okla.) 166 Pac. 199, but an oil lease containing the usual covenants, is not unilateral. *Hughes v. Parsons*, 183 Ky. 584, 209 S. W. 853, and it is of the very essence of an option that it should not be mutual. The optionee pays his money in purchase of the right of choice. *Northwestern Oil & Gas Co. v. Branine* (Okla.) 175 Pac. 533.

"A unilateral contract is one in which there is a promise on one side only, the consideration on the other side being executed." This definition is then followed by a discussion at length of the question of mutuality. *Rich v. Doneghey* (Okla.) 177 Pac. 86, 90.

It may be stated in general that attacks on oil leases for want of either consideration, or of mutuality, have usually failed—except on bills for specific performance where both mutuality and consideration seem to be required.

And why should they not fail? Both parties on the surface contract or attempt to contract about value supposed to exist a thousand feet under the spot where they stand. The one who undertakes to demonstrate this value takes all the risk and it is unconscionable to say that he shall be denied the realization of his anticipations for nonconformity to an abstract proposition upon which so many different opinions have been delivered in the attempt to apply it to the ever varying complications of oil and gas contracts.

Consideration and Mutuality Distinguished.

Consideration is continually confounded with mutuality or want of mutuality. A consideration is essential but mutuality is not. Where there is a promise against a promise, one promise is a consideration for the other and there is mutuality—so that there is both consideration and mutuality. An option contract is not mutual but the contract which gives it must be supported by value received or promised, otherwise it is neither mutual nor has it a consideration. If one party never was bound to do the thing which forms the consideration of the promise of the other, there is such a want of mutuality as makes the agreement voidable but when the other party performs it, the consideration comes into being. The matter of this paragraph is reasoned and sustained in *Rich v. Doneghey* (Okla.) 177 Pac. 86, 98, and *Hopkins v. Ziegler*, 259 Fed. 43, reversing *Ziegler v. Hopkins*, 258 Fed. 467.

An analysis of the reasoning of the Court leads up to the conclusion that a promise to be performed at the performers option is void, unless supported by a consideration; but this consideration may be by royalty, rent, or even the nominal payment of \$1—and the promise may allow to the lessee a choice of several things, to wit; 1 to develop, 2 to pay a nominal sum and give up the lease or; 3 pay a delay rental. "The lessee cannot escape from all these obligations. He may escape two of them but he is absolutely bound to do one of the three." Other language of the Court is, that "consideration is essential, mutuality of obligation is not, unless the want of mutuality would leave one party without a valid or available consideration for his promise."

There are many other cases on the same line leading the judges to the field of abstract and scholastic propositions and tracking far from the practical solution of the issues of vital interest to the litigants, but this opinion seems to state the general legal conclusion in exceptionally clear terms.

A covenant to do one of two things in the alternative, i. e., sink or pay rent, does not impart a fatally unilateral character into the lease. But a lease which does not take effect unless the lessee does a certain act is only executory and is not operative if the condition is not performed. *Hopkins v. Ziegler*, 259 Fed.

43, citing *Guffey v. Smith*, 237 U. S. 101, 59 L. ed. 856, 35 Sup. Ct. 526; *Lindlay v. Raydure*, 239 Fed. 928; *Raydure v. Lindlay*, 249 Fed. 675, 161 C. C. A. 585; *Van Etten v. Kelly*, 66 Ohio St. 605, 64 N. E. 560, 22 M. R. 269; *Glasgow v. Chartiers Oil Co.*, 152 Pa. 48, 25 Atl. 232, 17 M. R. 523; *Shaffer v. Marks*, 241 Fed. 139 and note 44 L.R.A.(N.S.) 50, referring to *Ohio Valley Oil & Gas Co. v. Irvin Dev. Co.*, 184 Ky. 517, 212 S. W. 110, as possibly contra.

A contract granting the oil and other minerals, lessees to begin work within a certain time, is not unilateral. *Price v. Biggs* (Tex. Civ.) 217 S. W. 236.

An oil lease calling for quarterly delay rentals and allowing surrender upon payment of the nominal consideration of \$5 was held unilateral and void in *Owens v. Corsicana Petroleum Co.* (Tex. Civ.) 169 S. W. 192. On a very similar paper by the same Court later, the contrary was held and the *Corsicana* case doubted. *Pierce Fordyce Oil Assn. v. Woodrum* (Tex. Civ.) 188 S. W. 245.

The option to surrender does not make the lease unilateral. *Rechard v. Cowley* (Ala.) 80 So. 419.

The fact that lessee's covenants are largely optional does not invalidate the contract. *Ulrey v. Poe*, 134 Ill. App. 298.

When the conditions of the lease have been in part performed and a consideration has passed to the lessor, the right to surrender becomes valid as nonunilateral. *Ulrey v. Poe*, 134 Ill. App. 298.

Only the lessor can claim that a lease is unilateral from the presence of the surrender clause; the lessee in a subsequent lease cannot urge the invalidity of a prior lease for that reason. *Brennan v. Hunter* (Okla.) 172 Pac. 49.

The issue of stock to the lessor by a company, the assignee proposed in the lease, defeats all assertion of want of mutuality. *McEntire v. Thomason* (Tex. Civ.) 210 S. W. 563.

CHAPTER 18.

LEASE. THE SURRENDER CLAUSE.

The express right to surrender is inserted in many of the printed forms of oil leases tho sometimes left to inference from other clauses. The decisions almost uniformly support it and when once exercised it ends the lease and all further rent and of course all royalty ceases. Without regard to the technical question of consideration there is strong equity to support it. The lessee starting in good faith to sink may learn from the ill success of his neighbors that further drilling is useless or the market for oil or gas may disappear or the price of the product materially decrease, so as to render further operations hopeless of reimbursement. If it be said that these are mere business chances which should have been foreseen, the reply is that in contracts concerning staple goods there is only a margin of danger, but in the matter of oil and gas sinking, judicially recognized as a hazardous business, the loss if there be a loss is almost certain to be of the whole capital invested and that where such danger becomes apparent, further expenditure while a total loss to the lessee is of no corresponding advantage to the lessor.

The surrender clause is for the benefit of the lessee. *McKee v. Grimm*, 57 Okla. 680, 157 Pac. 308. And is to be strictly construed in favor of the land owner. *Shaffer v. Marks*, 241 Fed. 139. When the blank for the surrender clause was not filled in it was held not expressed. *Riddle v. Keechi Oil, etc., Co.* (Okla.) 176 Pac. 737.

The right to surrender, releases damages for delay in sinking. *Ardizzone v. Archer* (Okla.) 177 Pac. 554. The sum of \$25 was held a good and sufficient consideration for the right to surrender in *Dunaway v. Galbraith* (Ark.) 214 S. W. 33.

A lessée bound himself to sink or pay delay rental. After such express covenant came a clause that he, the lessee, has "the option to drill the well or pay such rental or not as he may elect."

The Court held that the quoted clause did not release the lessee from his express covenants. *McMillan v. Philadelphia Co.*, 159 Pa. 142, 28 Atl. 220. This case was followed in *Jackson v. O'Hara*, 183 Pa. 233, 38 Atl. 624, 19 M. R. 153, on a lease with the same wording. The Court treated the claim as "unjust and absurd." Nevertheless we consider that it was only one method of reserving the right to surrender the lease which is everywhere upheld and does not deserve the strong condemnation above quoted.

The presence of the surrender clause, gives lessor no right to determine the lease when the lease has not reached its term. *McCray v. Miller* (Okla.) 184 Pac. 781.

Object and Effect.

The clause reserving the right to surrender has some practical object and such object is under allowable conditions, to escape the expense of sinking or the payment of rentals.

When exercised it is a discharge from the obligation to sink and of all other covenants; in other words it ends the lease. But it does not defeat the collection of rent where the right to collect such rent has become already vested. It has no retroactive effect upon the *status* when the surrender materializes. *Aderhold v. Oil Well Supply Co.*, 158 Pa. 401, 28 Atl. 22; *Edmonds v. Mounsey*, 15 Ind. App. 399, 44 N. E. 196; *Bettman v. Shadle*, 22 Ind. App. 542, 53 N. E. 662; *Galey v. Kellerman*, 123 Pa. 491.

Not Automatic.

And the surrender does not become operative by the mere fact that the conditions exist upon which to predicate the right to exercise it. If the lessee is allowed to bring in the well or pay rent and does neither he cannot escape liability because he has the right to elect to surrender but must exercise the right, by tender of formal release or perform any other condition upon which the right to surrender is asserted. The "null and void" clause, is not automatic. *McKee v. Grimm*, 57 Okla. 680, 157 Pac. 308; *Cohn v. Clark*, 48 Okla. 500, 150 Pac. 467; *Leatherman*

v. Oliver, 151 Pa. 646, 25 Atl. 309; *Ogden v. Hatry*, 143 Pa. 640, 23 Atl. 324; *Ray v. West Pa. N. G. Co.*, 138 Pa. 576; *Scott v. Lafayette Gas Co.* 42 Ind. App. 614, 86 N. E. 495.

Associated with Delay Rentals.

The right to surrender is almost invariably associated with the delay rental clause and there is more than one line of decisions on the point. *Eclipse Oil Co. v. South Penn Oil Co.*, 47 W. Va. 84, passed on a case where the lessee did not bind himself to do anything for more than a year. The Court held that such a contract was *nudum pactum* until something had been done by one party to bind the other and that it was revocable by either at any time.

But most leases before they come up for adjudication are valid contracts which have undoubted legal validity at the outstart. The Court is called on to decide on the effect of the delay rental. A few cases hold that the main consideration being development, the landlord may refuse the delay rental if no well has been started. *Armitage v. Mt. Sterling O. & G. Co.*, 80 S. W. 177; *Long v. Sun Co.*, 132 La. 601, 61 So. 684; *National Pipe Line v. Teel*, 67 S. W. 545 (Tex. Civ.); *Jennings Heywood Oil Synd. v. Houssiere Latreille Co.*, 119 La. 793, 44 So. 481.

But the lessor cannot refuse the delay rental without giving the lessee reasonable notice of such election so as to allow sufficient time to sink the well. *Consumers Gas Co. v. Worth*, 163 Ind. 141; *Warren O. & G. Co. v. Gilliam*, 182 Ky. 807.

There are cases which hold that the delay rental is a condition precedent to make the lease good until the well is completed which is the just and natural construction and the same as held in other cases cited in this chapter in different language. *Hays v. Forest Oil Co.*, 213 Pa. 556; *Glasgow v. Chartiers Oil Co.*, 152 Pa. 48; *Parish Fork Oil Co. v. Bridgewater Gas Co.*, 42 S. E. 655, 59 L.R.A. 566; *Western Pa. Gas Co. v. George*, 161 Pa. 47; *Indiana N. G. Co. v. Granger*, 70 N. E. 395 (Ind. App.).

We find no case where the lessor is allowed to collect such rent and refuse further time except the few instances where it is considered to be in the nature of a penalty for delay already

accrued or as consideration for the original license to prospect the land. *Huggins v. Daley*, 99 Fed. 606.

The Right to Surrender.

When the lease was to become void if no well was sunk or the rent not paid, but there was no express covenant to do either, the lessee has the right to surrender. *Glasgow v. Chartiers Oil Co.*, 17 M. R. 523, 152 Pa. 48, 25 Atl. 232; *Van Etten v. Kelly*, 66 Ohio St. 605, 64 N. E. 560, 22 M. R. 269; *Brooks v. Kunkle*, 24 Ind. App. 624, 57 N. E. 260, 20 M. R. 540.

Complete cessation of work after sinking a dry well is a surrender of the lease. *McNish v. Stone*, 17 M. R. 22, 152 Pa. 457, 25 Atl. 732 note; *Venture Oil Co. v. Fretts*, 17 M. R. 543, 152 Pa. 451, 25 Atl. 732.

The right to surrender does not invalidate the lease nor render it void for want of mutuality nor give the lessor the right to cancel. *Lindlay v. Raydure*, 239 Fed. 928; *Northwestern Oil & Gas Co. v. Branine* (Okla.) 175 Pac. 533; *Jackson v. Pure Oil, etc., Co.* (Tex. Civ.) 217 S. W. 959; *Rich v. Doneghey* (Okla.) 177 Pac. 86, 88.

The right to surrender on notice given to the lessee, does not confer a similar right on the lessor. *Eastern Oil Co. v. Beatty* (Okla.) 177 Pac. 104.

A lease for which \$1 consideration is paid and requiring the tenant to drill and pay royalty with the alternative of a delay rental is not a mere option revocable at the lessor's will. And the right of surrender does not give the lessor the correlative right to cancel. The right to surrender the lease for cancellation on payment of \$1 does not render the lease unilateral, so as to give the lessor the right to cancel. (The opinion reviews the cases on this point.) *Lovett v. Eastern Oil Co.*, 68 W. Va. 667, Ann. Cas. 1912B, 360, 70 S. E. 707.

Notice of intention to surrender must be given before the beginning of the year intended to be surrendered. The mere cessation to use gas from the well is not equivalent to surrender or notice of surrender. *Double v. Union Heat, etc., Co.*, 172 Pa. 388, 33 Atl. 694, 18 M. R. 327.

A single cotenant of the lease cannot surrender it so as to

bind his associates. *Edmonds v. Mounsey*, 15 Ind. App. 399, 44 N. E. 196, 18 M. R. 384; *Hooks v. Forst*, 18 M. R. 139, 165 Pa. 238, 30 Atl. 846.

An oil lease may be surrendered by parol. *Hooks v. Forst*, 165 Pa. 238, 30 Atl. 846, 18 M. R. 139.

A tender after rescission will not revive a surrendered lease. *Hooks v. Forst*, 165 Pa. 238, 30 Atl. 846, 18 M. R. 139.

Whether a lease has been surrendered is a question of fact for the jury. *Garrett v. South Penn Oil Co.*, 66 W. Va. 587, 66 S. E. 741.

Andrews v. Andrews, 256 Pa. 24, 100 Atl. 521, is a peculiar case not likely to arise again where oil was struck on leased ground eight years after the date of the lease and seven years after the decease of the lessor; but the lessor in his will had anticipated the possible finding of oil and had provided for it. The case is of value principally upon the point that the long delay did not give rise to a presumption of a surrender of the lease.

In *Pucini v. Bumgarner* (Okla.) 175 Pac. 537, the lease contained the surrender clause with a proviso that such clause was to become void upon the institution of a suit by the lessee to enforce the lease. The proviso was held valid without any reference to the fact that it was the waiver without consideration of a party's right to legal relief and obviously contrary to public policy. It is referred to in *Brunson v. Carter Oil Co.*, 259 Fed. 656, 665.

Where a lessee is allowed to remove his property and re-convey the premises and so cancel the lease, there is a corresponding right in the lessor before development to compel surrender. *Melton v. Cherokee Oil, etc., Co.* (Okla.) 170 Pac. 691. The opinion cites *Brown v. Wilson*, 58 Okla. 392, L.R.A.1917B, 1184, 160 Pac. 94, since overruled and seems contrary to many of the above citations.

In *Monfort v. Lanyon Zinc Co.*, 72 Pac. 784, the lease was held extendible on a yearly payment of \$40 and \$25 was held good and sufficient consideration in *Dunaway v. Galbraith*, 214 S. W. 33 (Ark.).

A coal lease providing no time to begin mining and wholly

executory allowing lessee at any time to cancel at his volition, is unilateral and will be cancelled on bill filed for such purpose. *Daniel Boone Co. v. Miller*, 217 S. W. 666. (Ky.)

Assigns Protected.

Where on payment of an acreage rent the lessee surrenders, his assigns cannot be held for delay in sinking the well. *Ardizzone v. Archer*, 177 Pac. 554 (Okla.)

M. O. R.—6.

CHAPTER 19.

LEASE. THE COVENANT TO SINK. DILIGENCE.

In practically every oil or gas lease there is an express covenant to work, if not expressed, it is usually implied and the measure of performance is reasonable diligence.

The essential purpose of an oil and gas lease is to develop production. *Dill v. Frazee*, 169 Ind. 53, 79 N. E. 971.

A lessee will not be permitted to let the well lie idle for speculative purposes. *Gadbury v. Ohio, etc., Gas Co.*, 162 Ind. 9, 62 L.R.A. 895, 67 N. E. 259, 22 M. R. 680.

Neither party has the arbitrary right to decide what is diligence: that is for the Court to determine. *Strange v. Hicks*, 188 Pac. 347 (Okla.)

Covenant to Sink.

This covenant may be in terms to sink or drill or to work or commence operations or in other words having the same meaning. If there is no specific covenant to such effect, it is nevertheless always implied unless distinctly negatived.

There is an implied covenant to develop within a reasonable time. Failure to complete within the given time authorizes forfeiture or cancellation. *New State Oil & Gas Co. v. Dunn* (Okla.) 182 Pac. 514; *Hughes v. Parsons*, 183 Ky. 584, 209 S. W. 853. Development within a reasonable time is a condition expressed or implied in all oil leases. *Dinsmoor v. Combs*, 177 Ky. 740, 198 S. W. 58; *New State Oil & Gas Co. v. Dunn* (Okla.) 182 Pac. 514.

There is an implied covenant to keep on at work when oil or gas is found. *Strange v. Hicks*, 188 Pac. 347 (Okla.)

After the expiration of the time limited for the first well, a covenant attaches to continue to prosecute the work of development and production. The failure to keep such covenant was a

substantial breach entitling the lessor to forfeiture, altho due to a misconception of the obligations of the lease. *Brewster v. Lanyon Zinc Co.*, 140 Fed. 801, 72 C. C. A. 213.

A promise to pay rent until, in lessee's judgment, oil or gas cannot be found or having been found have ceased to exist, clearly imposes an agreement to explore. *Consumers' Gas Trust Co. v. Littler*, 162 Ind. 320, 70 N. E. 363.

Reasonable Time.

What is reasonable time is usually for the jury but where the facts are conceded it becomes a question of law for the Court. *American Window Glass Co. v. Indiana, etc., Oil Co.*, 37 Ind. App. 439, 76 N. E. 1006.

Default on Time.

Where the lessee made default in drilling within a specified time and in paying the delay rental, time was material, and forfeiture must follow failure to do either. *Rowe v. Atlas Oil Co.*, 84 So. 485, 147 La. —.

Where a lease called for first payment which was made and for a further payment if the well was not drilled within a certain time, but no specified date was fixed for such payment the lessee could not be placed in default until after such second payment had been demanded. *Keen v. Logan*, 84 So. 501, 147 La. —.

The lease cannot be cancelled for failure to develop until lessors have refused the rent and notified the lessee to proceed after which notice he has a reasonable time to commence to drill. *Ocala Oil Co. v. Hughes*, 219 S. W. 799 (Ky.)

Completion of Well.

A completed well means finished or sunk to the depth necessary to find the oil or to such a depth as, in the absence of oil, precludes the probability of finding it at a further depth. *Frost v. Martin* (Tex. Civ.) 203 S. W. 72.

The sinking of a well being the consideration of the lease, the consideration stands, altho the well was immediately plugged, and the casing withdrawn. *Stahl v. Van Vleck*, 18 M. R. 231,

53 Ohio 136, 41 N. E. 35. Where lessee plugged the well after striking gas in connection with delay to work, held grounds to cancel the lease. *Gadbury v. Ohio, etc., Gas Co.*, 162 Ind. 9, 62 L.R.A. 895, 67 N. E. 259, 22 M. R. 680.

Commencing to Drill.

Where the lease required that drilling operations should be commenced within certain time, the bringing of lumber on the premises and installing a derrick, were held good compliance with the condition, the starting of actual drilling within the time not being essential. *Fast v. Whitney* (Wyo.) 187 Pac. 192, citing *Henderson v. Ferrell*, 183 Pa. 547, 38 Atl. 1018, 19 M. R. 205; *Fleming Oil & Gas Co. v. South Penn Oil Co.*, 37 W. Va. 645, 17 S. E. 203 and *Hudspeth v. Producers Oil Co.*, 134 La. 1013, 1018, 64 So. 891. *Gonzales v. Cowerd*, 188 Pac. 1053 (Okla.)

Failure to begin work is the same as ceasing to operate. *Woodward v. Mitchell*, 18 M. R. 158, 140 Ind. 406, 39 N. E. 437.

A covenant to commence drilling within a fixed period is not performed by starting work and then indefinitely suspending it. *McNish v. Stone*, 17 M. R. 22, 152 Pa. 457, 25 Atl. 732 note.

Point of Sinking.

The tenant will not be allowed to arbitrarily select a spot to sink where it would be a serious inconvenience to the lessor when other spots close by are equally available. *Gillespie v. American Zinc, etc., Co.*, 247 Pa. 222, 93 Atl. 272; *Gulf Pipe Line Co. v. Pawnee-Tulsa P. Co.*, 34 Okla. 775, 41 L.R.A. (N.S.) 1108, 127 Pac. 252.

Oral testimony is admissible to point out the place where and the time when, under the contract, a well was to be brought in. *White v. Kroeger* (Okla.) 186 Pac. 477.

Diligence.

What is due diligence is a question of fact for the jury. *Day v. Kansas City Pipe Line Co.*, 87 Kan. 617, 125 Pac. 43; *Buffalo Valley Oil & Gas Co. v. Jones*, 75 Kan. 18, 88 Pac. 537.

Excuse for Delay.

Delay to commence a well may be explained by consideration of the accidents of the business, means of transportation and other incidents. And may or may not be sufficient excuse according to the facts. *Price v. Black*, 126 Iowa, 304, 101 N. W. 1056; *Chandler v. French*, 73 W. Va. 658, L.R.A.1915B, 561, 81 S. E. 825.

In *Baldwin v. Blue Stem Oil Co.* (Kan.) 189 Pac. 920, a suit to cancel oil and gas leases for failure to drill or pay within a three year period, the defendants attempted to excuse delay on account of excessive rainfall and an untimely blizzard, the sickness of their employees and the war interference with the coal supplies. But the Court held that the receiver was bound to take notice of climatic conditions and that he was further bound to take notice of the war power of the government.

Where the lease was on undeveloped ground, the fact that lessee delayed a short time while other test wells were sinking in the neighborhood was natural and sensible under the circumstances. *Washburn v. Gillespie*, 261 Fed. 41.

Working other wells in the neighborhood and want of transportation facilities is no excuse for breach of covenant for steady work. *Woodward v. Mitchell*, 140 Ind. 406, 39 N. E. 437, 18 M. R. 158.

On the question of diligence, the activity of oil and gas wells in the locality was considered in *Buffalo Valley Oil & Gas Co. v. Jones*, 75 Kan. 18, 88 Pac. 537.

An oil lease contains an implied covenant to keep diligently at work, but a cessation of work and even removal of machinery, on good reasons therefor, is not necessarily a breach of this covenant. On the facts set forth in the opinion it was held that there was no breach. *Phillips v. Hamilton*, 17 Wyo. 41, 95 Pac. 846.

Covenant Runs with the Land.

The covenant to sink a well is a covenant running with the land—and this rule was applied to the implied covenant to sink wells enough to protect against drainage. *Bradford Oil Co. v. Blair*, 113 Pa. 83, 57 Am. Rep. 442, 4 Atl. 218.

Danger of Drainage.

The fact that oil is being drained from the premises by wells in the neighborhood is a fact that tends to prove the allegation of neglect of the lessee to operate the ground with diligence. *Brewster v. Lanyon Zinc Co.*, 140 Fed. 801, 72 C. C. A. 213.

Business Judgment

Where in the keeping of his working covenants, business judgment is required of the lessee, if he exercises such judgment in good faith it cannot be questioned by the lessor. *Colgan v. Forest Oil Co.*, 194 Pa. 234, 75 Am. St. Rep. 695, 20 M. R. 338, 45 Atl. 119; *Kellar v. Craig*, 126 Fed. 630, 61 C. C. A. 366. Both these cases are cited in *Brewster v. Lanyon Zinc Co.*, 140 Fed. on page 813, 72 C. C. A. 213 and declared "unsound"—but the criticism digresses from the point decided, which is the use of business judgment, and loses itself in a definition of what amounts to reasonable diligence.

Lessor Attempting to Break Lease.

Where the lessor has attempted by legal proceedings to break the lease, he cannot complain of lessees delay excused by such proceeding. *Blodgett v. Lanyon Zinc Co.*, 120 Fed. 893, 58 C. C. A. 79; *Bradford Oil Co. v. Blair*, 113 Pa. 83, 57 Am. Rep. 442, 4 Atl. 218; *Brewster v. Lanyon Zinc Co.*, 140 Fed. 801 (815), 72 C. C. A. 213. And the same if he has repudiated the lease and forbids the tenant to enter on the premises. *La Fayette Gas Co. v. Kelsay*, 164 Ind. 563, 74 N. E. 7; *Consumers' Gas Trust Co. v. Worth*, 163 Ind. 141, 71 N. E. 489.

Waiver of the Covenant.

In *Keen v. Logan*, 84 So. 501, 147 La. —, the point is considered as to the effect of suit brought by the plaintiff, to excuse the performance of the promises of the defendant; Holding that the time be suspended until final determination of the suit. The decree is in accord with the doctrine that a party is not in default for nonperformance of the obligation so long as the other party refuses to permit a performance of the obligation.

Where the lessor told the lessee that a drilling on adjacent premises satisfied him and that he would not ask for the lease money there was no estoppel because it did not appear that the lessee or his assignee, had acted on the statement. *Rowe v. Atlas Oil Co.*, 84 So. 485, 147 La. —.

Work and development are not implied where a valid present consideration has been paid for the lease. *Chandler v. Hart*, 161 Cal. 405, Ann. Cas. 1913B, 1094, 119 Pac. 516. An acceptance of delay rental is a waiver of covenant to drill, for the year. *Consumers' Gas Trust Co. v. Worth*, 163 Ind. 140, 71 N. E. 489; *Consumers' Gas Trust Co. v. Littler*, 162 Ind. 320, 70 N. E. 363.

When a lessor has accepted delay rentals for years, he cannot suddenly require sinking on notice of a few days. *Consumers' Gas Trust Co. v. Littler*, 162 Ind. 320, 70 N. E. 363; *Consumers' Gas Trust Co. v. Worth*, 163 Ind. 141, 71 N. E. 489; *Consumers' Gas Trust Co. v. Crystal Window Glass Co.*, 163 Ind. 190, 70 N. E. 366; *Consumers' Gas Trust Co. v. Ink*, 163 Ind. 174, 71 N. E. 477.

Wildcat.

The strict rule as to development does not apply to Wild Cat Territory. *Lone Star Gas Co. v. McCullough* (Tex. Civ.) 220 S. W. 1114.

CHAPTER 20.

LEASE. NUMBER OF WELLS. PROTECTION.

Number of Wells.

Any covenant expressed or implied to sink at all, means at least one well and the doctrine of protection may extend the number of wells indefinitely.

If the first hole is dry, the lessee may sink a second. When he has sunk one producing well, some of the cases hold that he must continue to sink as many as is necessary to develop the property. *Daughetee v. Ohio Oil Co.*, 263 Ill. 518, 105 N. E. 308; *Chandler v. Hart*, 161 Cal. 405, Ann. Cas. 1913B, 1094, 119 Pac. 516, but even if under implied covenant to sink more than one well, breach of such covenant does not justify the cancellation of the lease. *McGraw O. & G. Co. v. Kennedy*, 65 W. Va. 595, 28 L.R.A.(N.S.) 959, 64 S. E. 1027; *Carr v. Huntington, etc., Co.*, 33 Ind. App. 1, 70 N. E. 552. Without deciding that plaintiff was entitled to forfeiture at all, it was held that it was not enforceable without demand upon the lessee to sink the further well. *Dinsmoor v. Combs*, 177 Ky. 740, 198 S. W. 58.

Where the lease does not fix the number of wells to be drilled, the lessee has the right to determine the number. *Gilbert v. Bolts*, 62 Ind. App. 595, 113 N. E. 379. The Court in this decision adopts the same rule as in the case where the question of paying quantities is concerned.

When a lessee has paid a bonus and covenanted to sink one well which he does—he has earned the right to the full term of the lease and is not impliedly bound to keep on further attempts to find oil. *Key v. Big Sandy, etc., Co.* (Tex. Civ.) 212 S. W. 300; *O'Neil v. Sun Co.* (Tex. Civ.) 123 S. W. 172.

A lessee is not bound to sink a second gas well when there is danger of destroying the yield of the first. *McKnight v. Manu-*

facturers *N. G Co.*, 146 Pa. 185, 28 Am. St. Rep 790, 23 Atl. 164, 17 M. R. 429.

A lessee obliged to drill has the right to sink a second well when the first proves dry. *Henne v. South Penn Oil Co.*, 52 W. Va. 192, 43 S. E. 147; *Monroe v. Armstrong*, 96 Pa 307; *Aye v. Philadelphia Co.*, 193 Pa. 451, 74 Am St. Rep. 696, 44 Atl. 555, 20 M. R. 177.

Jury Question.

Where a written lease was not clear as to how many wells were to be sunk, the question of the intention of the parties is for the jury. *Kirlicks v. Texas Co.* (Tex. Civ.) 201 S. W. 687.

The lessee was to sink seven wells—each within “sixty days from the completion of the last one,” and in default of such sinking, an acreage rental was to be paid. More than seven wells were sunk. It was held that no rental was demandable for delay in sinking the extra wells. *Stahl v. Illinois Oil Co.*, 45 Ind. App. 211, 90 N. E. 632. A somewhat similar case is *Decker v. Kirlicks* (Tex.) 216 S. W. 385.

Keeping on to Second Sand.

Where oil or gas is discovered in an upper sand and drilling is continued in search of oil or gas in the lower sand, the lessee does not lose his rights by the continued drilling. But if nothing be found in the lower stratum, he cannot further delay producing the mineral found in the upper stratum. *Eastern Oil Co. v. Coulehan*, 65 W. Va. 531, 64 S. E. 836.

CHAPTER 21.

LEASE. PAYING QUANTITIES.

The term of almost every oil and gas lease reads to continue as long as oil or gas is found in paying quantities or as long as oil is produced or in words of like meaning.

Paying Quantities Defined.

Paying quantities is considered and defined in *Aycock v. Paraffine Oil Co.* (Tex. Civ.) 210 S. W. 851, making a distinction when the question of sinking other wells is involved. It has different meanings when involved with the special terms of the lease. Ordinarily the original cost of the well is not to be considered. *Ardizonne v. Archer* (Okla.) 178 Pac. 263; *Lowther Oil Co. v. Miller Sibley Oil Co.*, 53 W. Va. 501, 97 Am. St. Rep. 1027, 44 S. E. 433, 22 M. R. 656. But even a small profit may be enough. *Young v. Forest Oil Co.*, 194 Pa. 243, 45 Atl. 121, 20 M. R. 345.

The Court construes the phrase "paying quantities" in connection with the other clauses and in a long lease where no well has ever been sunk the payment of rent does not save the term to reach the paying quantity period. *Indiana Natural Gas, etc., Co. v. Grainger*, 33 Ind. App. 559, 70 N. E. 395; *American Window Glass Co. v. Indiana, etc., Oil Co.*, 37 Ind. App. 439, 76 N. E. 1006.

A party may define a paying well as one producing so many barrels per day—and he will be held to that definition altho with a smaller production the well was a paying well. *McLean v. Kishi* (Tex. Civ.) 173 S. W 502.

A covenant to sink a well to "success" is not complied with when oil is struck but not pumped to surface. Lessees declaration that oil had been found in paying quantities does not prove such allegation to be a fact. *Kennedy v. Crawford*, 138 Pa. 561.

How Determined.

Where the lease called for a second well only if oil or gas is found in paying quantities in determining that issue, the cost of the original well is to be considered. *Manhattan Co. v. Carrell*, 164 Ind. 526.

On the issue of paying quantity, the productivity of neighboring wells and the evidence of experts is admissible. *Osburn v. Finkelstein* (Ind.) 126 N. E. 11.

Evidence that many wells had been sunk in the locality and only a trace of oil found is proof on the issue of paying quantities. *Rice v. Ege*, 42 Fed. 661, 16 M. R. 179.

In *Iams v. Carnegie N. Gas Co.*, the phrase was "if gas be found in sufficient quantities to justify marketing"—it was held that the operator was not bound to work at a loss but if after considering the expense of marketing and all other incidents, it would pay, he was liable. 194 Pa. 72, 45 Atl. 54, 20 M. R. 335.

Cost of First Well When Material.

It would seem obvious without any decision that where the paying quantity clause is considered merely in connection with the duration of the term, the cost of sinking the well or wells cuts no figure. The issue is, can the well be worked at a profit over current expenses. But when the answer to the question is, to determine whether the lessee is to sink more wells, to perform his duty to protect the ground, all previous expenditures in sinking must be taken into account. But the cases cited in this chapter fully sustain this proposition.

Lessee to Decide.

The determination of paying quantities as a fact as a rule is left solely to the lessee, acting in good faith. *Barbour, etc., Co. v. Tompkins*, 81 W. Va. 116, 93 S. E. 1038; *Hennessy v. Junction etc., Oil Co.* (Okla.) 182 Pac. 666; *Young v. Forest Oil Co.*, 194 Pa. 243, 45 Atl. 121, 20 M. R. 345; *Osburn v. Finkelstein* (Ind.) 126 N. E. 11; *Lowther Oil Co. v. Miller Sibley Oil Co.*, 53 W. Va. 501, 97 Am. St. Rep. 1027, 44 S. E. 433, 22 M. R. 656.

It is for the lessee, not for the lessor, acting in good faith to

say whether gas is being produced in paying quantity. *McGraw Oil & Gas Co. v. Kennedy*, 65 W. Va. 595, 28 L.R.A.(N.S.) 959, 64 S. E. 1027; *Summerville v. Apollo Gas Co.*, 207 Pa. 334, 56 Atl. 876. But he cannot act arbitrarily contrary to the conceded facts concerning production. *Daughetee v. Ohio Oil Co.*, 263 Ill. 518, 105 N. E. 308. And his judgment is not to be attacked, except on the allegation of fraud which must be pleaded. *Manhattan Oil Co. v. Carrell*, 164 Ind. 526, 73 N. E. 1084.

Where the lessee was to pay a certain rent if gas was found and the lessee was willing to pay the rent, it was not for the lessor to refuse it and forfeit the lease, because, as he alleged it was not in paying quantity. *McGraw Oil & Gas Co. v. Kennedy*, 65 W. Va. 595, 28 L.R.A.(N.S.) 959, 64 S. E. 1027.

Where a lease ran for two years with the paying quantities clause, it ensued that an immense flow of gas was struck, but for want of a purchaser it was not utilized, so that no profit came to either party from the gas. The Court held that the assertion of the lessor that paying quantities had not been found, was untenable under such facts. *Summerville v. Apollo Gas Co.*, 207 Pa. 334, 56 Atl. 876.

Effect on Term of Lease.

Where there is a fixed term and the paying quantities clause also the paying quantity clause does not begin to operate if neither oil nor gas was found during the time limited. *Cooke v. Gulf Ref. Co.*, 127 La. 592, 53 So. 874.

When the time limit of the lease expires and oil has not been found in paying quantities the use of these words does not extend the term. *Chaney v. Ohio, etc., Oil Co.*, 32 Ind. App. 193, 69 N. E. 477; *Western Pennsylvania Gas Co. v. George*, 161 Pa. 47, 28 Atl. 1004; *Brown v. Fowler*, 65 Ohio St. 507, 63 N. E. 76; *Cassell v. Crothers*, 193 Pa. 359, 44 Atl. 446, 20 M. R. 160; *Cooke v. Gulf Ref. Co.*, 127 La. 592, 53 So. 874; *Shellar v. Shivers*, 171 Pa. 569, 33 Atl. 95, 18 M. R. 260; *Western Pennsylvania Gas Co. v. George*, 161 Pa. 47, 28 Atl. 1004.

A lease was for a fixed term and "as long thereafter as oil is found in paying quantities." Oil in paying quantities was found. The Court held that after the end of the fixed term and after

the wells had ceased to yield oil in paying quantities the lessee was a tenant at will and either party had the right to declare the term ended. *Cassell v. Crothers*, 193 Pa. 359, 44 Atl. 446, 20 M. R. 160.

Fall in the price of oil is no defense to the covenant to operate. The case seems to imply that the paying quantities term ends in such case the same as if no oil had been found. *Collins v. Mt. Pleasant O. & G. Co.*, 85 Kan. 483, 38 L.R.A.(N.S.) 134, 118 Pac. 54.

The paying quantities clause will not enlarge the term beyond the fixed period where the proof shows the well sunk was only a small producer and during the five years of the term no substantial effort had been made to develop the property. *Barnsdall v. Boley*, 119 Fed. 191.

Two Flows Struck.

Where the well struck gas in paying quantities, but was continued deeper and struck more gas, the lessee did not lose his rights by casting off the first flow. He had the right to go back and later use the upper flow. *Roach v. Junction, Oil, etc., Co.* (Okla.) 179 Pac. 934.

Lessee Not Bound to Shoot.

A lessee is not bound to shoot a well to show whether it may be made to produce in paying quantities. *Rice v. Ege*, 42 Fed. 661, 16 M. R. 179.

CHAPTER 22.

LEASE. THE RENTS AND ROYALTIES.

A covenant to pay periodical rent as the sole consideration for the lease, such as is reserved in the lease of a dwelling, is not usual. Such a reservation would be perfectly valid, but the surrounding conditions of the demise, suggest a royalty, which is in fact a rent based on the hazard of the adventure.

The rent most common is one based on provisions for extensions of time or as damages for delay to start work.

"In mining leases these words 'Rent' and 'Royalty' are used interchangeably to convey the same meaning" *Nelson v. Republic Iron, etc., Co.*, 240 Fed. 285, 293, 153 C. C. A. 211.

Covenant Runs with the Land.

The royalty covenant is a covenant running with the land. *Stone v. Marshall Oil Co.*, 188 Pa. 602, 41 Atl. 748, 1119, 19 M. R. 593. *Edmonds v. Mounsey*, 18 M. R. 384, 15 Ind. App. 399, 44 N. E. 196; *Pierce Fordyce Oil Assn. v. Woodrum* (Tex. Civ.) 188 S. W. 245.

Delay Rentals.

The question of the sufficiency of the original consideration is eliminated by the payment of a delay rental. *McKay v. Tally*, 220 S. W. 167 (Tex. Civ.).

Royalty is the substantial consideration in an oil lease and not the delay rentals. *Stahl v. Illinois Oil Co.*, 45 Ind. App. 211, 90 N. E. 632; *Gadbury v. Ohio, etc., Gas Co.*, 162 Ind. 9, 62 L.R.A. 895, 67 N. E. 259, 22 M. R. 680.

Altho royalty is of the essence of oil and gas leases parties have the right to so word the lease as to delay it for a long time and where such time is expressed, lessor has no right to demand

immediate performance. *Ringle v. Quigg*, 74 Kan. 581, 87 Pac. 724.

Delay rentals are payable in advance. *Dill v. Frazee*, 169 Ind. 53, 79 N. E. 971.

Where money is due 10 days after a certain date the day of such date is excluded. *White v. Dennis*, 220 S. W. 161 (Tex. Civ.)

Where the \$1 consideration gives the right to pay a delay rental, no rent is payable for the first year. *Sullivent v. Clear Creek Oil, etc., Co.* (Ark.) 211 S. W. 173.

Lease.

The burden of proof of payment of delay rental is on the lessee. *Pure Oil Operating Co. v. Gulf Ref. Co.*, 143 La. 284, 78 So. 560.

The right to pay delay rentals does not extend beyond the fixed term of the lease. *Bettman v. Harness*, 42 W. Va. 433, 36 L.R.A. 566, 26 S. E. 271, 18 M. R. 500.

The commencement of a well is not a condition precedent to the right to pay a delay rental. *Gaber v. Hauser* (Okla.) 185 Pac. 436. Lessee agreed to pay at the rate of \$1,000 per annum for delay in sinking. The Court distributed the damages by dividing the lump sum by the number of months of the default. *Galey v. Kellerman*, 17 M. R. 164, 123 Pa. 491, 16 Atl. 474.

The lessees had three months to complete the well and for five months after this period elapsed they remained in possession so that the Court allowed a recovery of 5/12 of \$1000.

Right of Action for Rent.

The privilege to the lessee to secure further time to sink by paying a rental is an option only and his failure to pay, gives no right of action for such rent. *United States v. Comet Oil, etc., Co.*, 187 Fed. 674; *Hays v. Forest Oil Co.*, 213 Pa. 556, 62 Atl. 1072.

Where lease provides that failure to work will render the lease null and void, this does not restrict the lessor to the right to terminate the lease, but gives him only an option so to do and he may have his action for the rent or for the delay in sinking.

Allen v. Narver, 178 Cal. 202, 172 Pac. 980, nor does the right to surrender destroy the right to sue for the rent. *McKee v. Grimm*, 57 Okla. 680, 157 Pac. 308.

Under a lease calling for a monthly rental, until a well is completed, or until the end of a fixed term, the lessee is bound for such rental, altho he never completes any well. *Lawson v. Kirchner*, 50 W. Va. 344, 40 S. E. 344, 21 M. R. 683.

A clause in a lease was to pay a certain sum within a fixed period after a well was sunk and gas found—the lessee was bound to sink the well and became absolutely liable on failure to sink. *Washington Natural Gas Co. v. Johnson*, 123 Pa. 576, 10 Am. St. Rep. 553, 16 Atl. 799, 16 M. R. 165.

Periodical Rent.

A lease requiring a well to be sunk within a fixed time, or in default of sinking reserving an annual rent, with a right to reconvey to the lessor is a lease at an annual rent at the option of the lessee only, and not a lease at will to either party. *Central Ohio Natural Gas & Fuel Co. v. Eckert*, 70 Ohio 127, 71 N. E. 281.

The agreement to receive an annual rent is a continuing offer by the lessor and it cannot be withdrawn without notice and opportunity to perform. *McKay v. Tally*, 220 S. W. 167 (Tex. Civ.)

Upon a somewhat similar lease it was held that the lessor at his election could sue for the rent, or for failure to drill. *Woodland Oil Co. v. Crawford*, 55 Ohio 161, 34 L.R.A. 62, 44 N. E. 1093.

A rent payable annually is not payable in advance. It may be paid any time during the year. *Rhodes v. Mound City Gas, etc., Co.*, 80 Kan. 762, 104 Pac. 851. *Blodgett v. Lanyon Zinc Co.*, 120 Fed. 893, 58 C. C. A. 79.

In *Arnold v. Garnett L. & F. Co.*, 103 Kan. 166, 172 Pac. 1012, the lease ran for two years with the right to extend it to 50 years if an annual acreage rent was paid and the lease was held unimpeachable.

Payment or Tender.

An oil lease for \$1 consideration provided for sinking well within two years with a proviso that forfeiture might be avoided by paying \$18.75 per annum, until the well was completed—held to create a lease until the well was completed. *Lowther Oil Co. v. Guffey*, 52 W. Va. 88, 43 S. E. 101, 22 M. R. 545. But such a lease does not give the right to delay sinking indefinitely and the lease was upheld, because the lessee was diligently engaged in drilling.

Where there are two lessors payment to either is good. *Jens-Marie Oil Co. v. Rixse* (Okla.) 178 Pac. 658.

When the lessor refuses to accept the delay rental, the lessee must start operations within a reasonable time, the opinion assuming that lessor had the right to refuse the delay rentals. *Consumers' Gas Trust Co. v. Worth*, 163 Ind. 141, 71 N. E. 489.

The royalties are the main consideration and lessee cannot delay work indefinitely on payment of the small rent reserved. But the lessor cannot avoid the lease by abruptly refusing to accept further rents, and it having been tendered for the second year the lease was saved from forfeiture. *Warren Oil & Gas Co. v. Gilliam*, 182 Ky. 807, 207 S. W. 698.

Payment by Deposit or Check.

Deposit of rent money in bank is good tender when the lessor is notified of the deposit and refuses to accept on other grounds. *Gillespie v. Fulton Oil & G. Co.* 236 Ill. 188, 86 N. E. 219.

When payment of bank deposit was allowable, but not made in time, the lessor is bound only to notify the depositor; he is not bound to see the deposit returned. *Pure Oil Operating Co. v. Gulf Ref. Co.*, 143 La. 284, 78 So. 560.

Where the bank is the lessee's agent to receive deposits of rentals, the lessee is not responsible for the bank's wrongful imposition of conditions on the tender of the deposits. *Lovett v. Eastern Oil Co.*, 68 W. Va. 667, Ann. Cas. 1912B, 360, 70 S. E. 707. The bank has no authority to extend the time. *Mitchell v. Probst*, 52 Okla. 10, 152 Pac. 597, 599.

Leaving check at the bank designated as the place of payment
M. O. R.—7.

of delay rentals is good payment. *Sayers v. Kent*, 201 Pa. 38, 50 Atl. 296; *Monfort v. Lanyon Zinc Co.*, 67 Kan. 310, 72 Pac. 784; *Gillespie v. Fulton Oil & G. Co.*, 236 Ill. 188, 86 N. E. 219; *La Fayette Gas Co. v. Kelsay*, 164 Ind. 563, 74 N. E. 7; *Indiana Natural Gas, etc., Co. v. Beals*, 166 Ind. 684, 76 N. E. 520.

Where tenders of rent are made and refused for reasons unrelated to such rentals, further tenders of rent are unnecessary. *Wright v. Gillespie*, 261 Fed. 46.

Where the bank is his designated agent, payment to the bank is the same as payment to the lessor and no defaults of the bank are chargeable to the lessee. *Hunter v. Gulf Prod. Co.*, (Tex. Civ.) 220 S. W. 163; *McKay v. Tally* (Tex. Civ.) 220 S. W. 167.

Instructions to the bank to refuse payment of which the lessees had no notice do not bind them. *McKay v. Kilcrease*, (Tex. Civ.) 220 S. W. 177 and *McKey v. Tally* (Tex. Civ.) 220 S. W. 167.

The return of a check marked refused is sufficient proof of tender. *Lone Star Gas Co. v. McCullough* (Tex. Civ.) 220 S. W. 1114.

Payment to Wrong Party.

A lessee who through mistake paid the rent to the lessor instead of the assignee (altho aware of the assignment) is entitled to relief against his default. *Brunson v. Carter Oil Co.*, 259 Fed. 656.

Lease Repudiated.

Where a lessor has repudiated the lease the tender of performance in lessee's bill for relief is a sufficient tender of any rentals called for by the lease. *Gillespie v. Fulton Oil & G. Co.*, 236 Ill. 188, 86 N. E. 219.

Where the lessee had the right to a renewal after he paid the minimum royalty and the lessor had given notice that he would not renew, the lessor could not enforce demand for the payment of such royalty having repudiated its consideration. *Warner v. Cochrane*, 128 Fed. 553, 63 C. C. A. 207.

When lessor gives notice that he will not accept the money the tender of the money is waived. *White v. Dennis*, 220 S. W. 161 (Tex. Civ.).

Demand or Notice, When Required.

Lessee may not by paying nominal rent be allowed to extend the lease indefinitely, but after receiving rent lessor must notify of his intent to refuse further payments. *Ohio Valley Oil & Gas Co. v. Irvine Dev. Co.*, 184 Ky. 517, 212 S. W. 110.

Where the lease provided that lessee should sink a well which he did, but it proved dry, the contract providing for an acreage rent if he failed to drill, he does not become liable for such rent by breach of a technical covenant to give notice of the failure of the well. *May v. Hazelwood Oil Co.*, 152 Pa. 518, 25 Atl. 564.

Royalty Treated as Purchase Money.

A demise of all the coal for ninety-nine years at a fixed royalty constituted a sale of the coal and the rents after the death of the grantor were payable as purchase money to his administrators and distributable as personal property. *In re estate of Lazarus*, 145 Pa. 1, 23 Atl. 372.

Use of Oil or Gas in Operating.

It is the general custom that oil gas or coal extracted from the leased premises used in operating, is not chargeable with rent or royalty. *Prichard v. Freeland Oil Co.*, 75 W. Va. 450, L.R.A. 1915D 1186, 84 S. E. 945. But a clause allowing free gas for such use will not allow use of gas beyond its express terms. *Ohio Oil Co. v. Burch* (Ind. App.) 124 N. E. 781.

The lessee has the right to place a meter to measure the free gas and the lessor has no right to unrestrained use of the gas. *Pittsburgh, etc., Gas Co. v. Richardson* (W. Va.) 100 S. E. 220.

Where the lessee was to furnish gas as part of the consideration of the lease the furnishing of gas from wells on other ground was not a part performance of the condition of the lease.

Hancock v. Diamond Plate Glass Co., 37 Ind. App. 351, 75 N. E. 659.

Pending Litigation.

In *Myers v. Shertzer* (*Shertzer v. Myers*) 82 Kan. 275, 108 Pac. 105, the lessee was held for rent accruing during pendency of a suit by which the lessor was trying to break the lease; the lessee failing to offer to surrender as he had the power to do under the lease.

In the opinion the Court uses the expression: "A man is not bound to succeed in every legal action he commences," which is a truism but a severe penalty was placed on the lessee in this case practically because he did not surrender his rights and his hope of profit at the outstart.

Recovery Back.

Rent paid without knowledge of defective title may be recovered back—otherwise if the tenant knew the facts. *Gaffney v. Stowers*, 73 W. Va. 420, 80 S. E. 501.

When Rent Ceases.

Where the lease calls for rent after gas is found in paying quantities, such rent ceases when the well is exhausted or abandoned. *Williams v. Guffey*, 18 M. R. 478, 178 Pa. 342, 35 Atl. 875; *Indianapolis Gas Co. v. Teters*, 15 Ind. App. 475, 44 N. E. 549, 18 M. R. 391.

Lessors Title Extinguished.

Lessee on being sued for royalty, may show that his lessor's title has been extinguished. *Stem v. Kemp* (Okla.) 186 Pac. 946.

Royalty as Property.

The ownership in the royalty has been considered in a few cases distinct from its relation as a debt against the lessee.

A percentage of the net profits of a mine is a royalty and is

rents and profits from real estate. *Minnesota Loan & T. Co. v. Douglas (Pettit's Estate)* 135 Minn. 413, 161 N. W. 158. A grant of the royalty is a grant of the oil itself. *Parton v. Benedum-Trees Oil Co.*, 80 W. Va. 187, 94 S. E. 472, Overruling *Haris v. Cobb*, 49 W. Va. 360, 38 S. E. 559, 21 M. R. 263.

Oil royalty is personal property and a bill in chancery will lie for its partition. *Warren v. Boggs* (W. Va.) 97 S. E. 589.

The percentage of oil royalty to be paid or delivered is the property of the lessee. *Coalinga Pacific Oil & Gas Co. v. Associated Oil Co.*, 16 Cal. App. 361, 116 Pac. 1107.

A contract for the total "production" of the well includes the royalty. *Coalinga Pacific Oil & Gas Co. v. Associated Oil Co.*, 16 Cal. App. 361, 116 Pac. 1107.

By-Products.

Where the lessee provides appliances (the vacuum pump process) by which the casing head gas is advanced to gasoline he is liable for royalty on the product the same as on the natural crude oil. *Wemple v. Producers Oil Co.*, 145 La. 1031, 83 So. 232; *Locke v. Russell*, 75 W. Va. 602, 84 S. E. 948.

The Louisiana case suggests that a part of the oil which was liable for royalty was converted into vapor and thus advanced to gasoline. The West Virginia case treats the vapor as something that unless treated as it was was a waste product.

Division of Royalties. The Wettengel Case.

In the case of *Wettengel v. Gormley*, 160 Pa. 559, 40 Am. St. Rep. 733, 28 Atl. 934, 18 M. R. 93, the owner gave a fifteen year oil lease on his farm of about 60 acres. At his decease the farm by will was cut up into three nearly equal tracts and came by devise to his three children, one to each in severalty. Pay wells had been drilled on one of these farms covered by the lease, and none on the other two. The Court ruled that each of the three owners was entitled to share in the royalty, according to the acreage of his farm. On a second suit this division was adhered to. 184 Pa. 364, 39 Atl. 1118.

The opinions in these cases have been followed but more

often dissented from. It is expressly disapproved in *Northwestern Ohio Natural Gas Co. v. Ullery*, 68 Ohio St. 259, 67 N. E. 494, and in *Rymer v. South Penn Oil Co.*, 54 W. Va. 530, 46 S. E. 559. In *Lynch v. Davis*, 79 W. Va. 437, L.R.A.1917F 566, 92 S. E. 427, the West Virginia Court without mention of their previous decision in the *Rymer case* approve of it. In the still later case of *Pittsburgh, etc., Gas Co. v. Ankrom*, 83 W. Va. 81, 97 S. E. 593, they returned to their original ground and overruled the *Lynch case*. In *Kimbley v. Luckey* (Okla.) 179 Pac. 928, a quarter section covered by an oil and gas lease had been subdivided. The Court strongly refer to the "interminable confusion" that would result from allowing each acre to share in its proportion of the royalty. To the same effect are *Fairbanks v. Warrum*, 56 Ind. App. 337, 104 N. E. 938, 1141, and *Osborn v. Arkansas, etc., Oil Co.*, 103 Ark. 175, 146 S. W. 122, and the late case of *Pierce Oil Corp. v. Schacht* (Okla.) 181 Pac. 731, but *Gillette v. Mitchell* (Tex. Civ.) 214 S. W. 619, follows the *Wetengel case* and cites the cases where it had been endorsed or repudiated.

CHAPTER 23.

LEASE. SECOND LEASE.

First Lease Exclusive.

As a lease is exclusive and does not allow the lessor himself to mind the demised tract (*Barker v. Dale*, 3 Pittsburg 190, Fed. Cas. No. 988, 8 M. R. 597) it follows necessarily that what the lessor cannot do himself, he cannot allow others to do and therefore a second lease to another party is void as against the first lease.

But the first lessee may have abandoned his term or his lease may be subject to forfeiture or his supposed surrender may be not admitted or disputable, so that a second lease is not of uncommon occurrence.

If the first lease is valid in all respects, the second lessee has no rights at all as against the first lessee where the second lessee has notice of the first lease. *Pyle v. Henderson*, 65 W. Va. 39, 63 S. E. 762. *Swan v. O'Bar* (Okla.) 167 Pac. 470. The second lessee with notice is not a *bona fide* purchaser. *Rader v. Shaffer* (Ky.) 218 S. W. 292. The second lessee in such case may be enjoined and the title of the first quieted. *Warren Oil & Gas Co. v. Gilliam*, 182 Ky. 807, 207 S. W. 698; *Downey v. Gooch*, 240 Fed. 527.

The party who takes the second lease with notice of the first takes the risk of proving that the first had been abandoned, and has been held to be bound by the terms of a parol agreement with the first lessee as to what should amount to due diligence or abandonment. *Bartley v. Phillips*, 179 Pa. 175, 36 Atl. 217, 18 M. R. 542. The second lessee cannot attack the consideration of the first lease nor its alleged want of mutuality. *Lindlay v. Raydure*, 239 Fed. 928; *Compton v. Peoples Gas Co.*, 75 Kan. 572, 10 L.R.A. (N.S.) 787, 89 Pac. 1039.

The fact that vendor had already sold the mineral rights to a third party is no breach of warranty of the same, when the buyer knew of such sale. *Sanders v. Rowe*, 48 S. W. 1083 (Ky.).

Second Lease Subject to First.

A second lease may be given subject to the rights of a prior lease. *Garrett v. South Penn. Oil Co.*, 66 W. Va. 587, 66 S. E. 741; *Cox v. Butts*, 48 Okla. 147, 149 Pac. 1090. And when there was an agreement to accept a lease when a prior lease should have determined, and the prior lease was released, the agreement became an executed contract, altho not formally signed. *Haynie v. Stovall* (Tex. Civ.) 212 S. W. 792.

When a lessee accepts a second lease it is a surrender of all rights under the first lease. *Garrett v. South Penn Oil Co.*, 66 W. Va. 587, 66 S. E. 741; *Great Western Oil Co. v. Carpenter*, 43 Tex. Civ. 229, 95 S. W. 57.

Notice of Prior Lease.

The recital in the papers of a former lease is notice of the outstanding lease. *Mexico Wyoming Petroleum Co. v. Valentine*, 237 Fed. 539, 150 C. C. A. 421. But where the rights of the first lessee have expired, the standing in equity of the second lessee may be better than that of the first lessee, altho the first lessee had lost his rights by mere mischance. *Hopkins v. Zeigler*, 259 Fed. 43, 44.

The giving of a second lease which recites the fact of lease outstanding or claimed so to be, is not a declaration of forfeiture as to the first lease. *Stone v. Marshall Oil Co.*, 188 Pa. 602, 41 Atl. 748, 1119, 19 M. R. 593; *Henne v. South Penn Oil Co.*, 52 W. Va. 192, 43 S. E. 147.

Whether plaintiff's possession was such as should put a subsequent lessee on inquiry was for the jury. *Aurelius v. Stewart*, 219 S. W. 863 (Tex. Civ.).

Sublessee Dealing Underhand with Owner.

Where the sublessee under a lease compelling the drilling of two wells, obtained a lease direct from the owner not requiring

the two wells, held that the second lease was a fraud on the original lessee. *Stone v. Marshall Oil Co.*, 188 Pa. 602, 41 Atl. 748, 1119, 19 M. R. 593.

Injunction in Aid of First Lease.

A suit to enjoin a second lessee, is a suit to prevent trespass and the doctrine that equity will not enforce a contract where there is no mutuality of rights, does not apply. An oil lessee has no adequate remedy at law where a subsequent lessee is removing the oil. *Lindlay v. Raydure*, 239 Fed. 928; *Guffey v. Smith*, 237 U. S. 101, 59 L. ed. 856, 35 Sup. Ct. 526, Reversing 202 Fed. 106, 120 C. C. A. 436.

CHAPTER 24.

LEASE. ASSIGNMENT.

Unless forbidden by his covenant to assign, there being no relation of trust and confidence between landlord and tenant, the lessee has the right to either assign or sublet, but such assignment does not ordinarily release him from the covenants of his lease as the original contracting party with the lessor.

An oil lease on good consideration and therefore assignable, will be upheld as to innocent purchasers without notice of any infirmity. *McKay v. Lucas*, 220 S. W. 172 (Tex. Civ.).

An oil lessee has the right to sublet in parcels and to subdivide the land. The old rule in *Lord Mountjoy's case*, 4 Leon. 147, as to surcharging the mines has no application to the conditions incident to mining for oil. *Chandler v. Hart*, 161 Cal. 405, Ann. Cas. 1913B 1094, 119 Pac. 516.

Upon acceptance of the assignment, the assignee becomes bound by the covenants of the lease even though he has never entered on the land. *Edmonds v. Mounsey*, 15 Ind. App. 399, 44 N. E. 196, 18 M. R. 384. This includes the rental covenant. *Pierce Fordyce Oil Assn. v. Woodrum* (Tex. Civ.) 188 S. W. 245, but does not cover breaches complete before he purchased. *Washington Natural Gas Co. v. Johnson*, 123 Pa. 576, 10 Am. St. Rep. 553, 16 Atl. 799, 16 M. R. 165; *Cox v. Butts*, 48 Okla. 147, 149 Pac. 1090.

Simms v. Southern Pipe Line Co. (Tex. Civ.) 195 S. W. 283. was a suit for specific performance of a contract to sell the product of certain large wells to the plaintiff company. The plaintiff was an assignee of the lease and bought with knowledge of its contract with the Pipe Line Company. Specific performance was denied on the ground that there was adequate relief at law, but the material point decided was that the assignee was bound by the contract of its assignor.

Where a lease contains a covenant against assignment but the lessor recognizes the assignee inducing change of his position to his prejudice, the lessor is estopped to deny consent to the assignment. *Warner v. Cochrane*, 128 Fed. 553, 63 C. C. A. 207.

The fraud in suppression of facts by the lessor or the non-payment of a bonus receipted for by him does not affect the validity of the lease in the hands of bona fide assignee. *Moore v. Sawyer*, 167 Fed. 826.

An assignment of all the first party's right, title and interest in a lease, where the buyer has knowledge of a previous outstanding demise carries no warranty and the buyer takes the risk. *Tupeker v. Deaner*, 46 Okla. 328, 148 Pac. 853. And on the peculiar facts of the case in *Eastern Oil Co. v. Holcolm*, 212 Fed. 126, 128 C. C. A. 642, there was held to be no warranty.

Incidents of Assignment.

A covenant between the lessee and his assignee is personal and does not pass by a transfer of the lease. *Millan v. Bartlett*, 78 W. Va. 367, 89 S. E. 711. The assignment does not release the tenant from his express covenants. *Heller v. Dailey*, 28 Ind. App. 555, 63 N. E. 490. And on account of the sudden fluctuations in value of oil leases, time is of the essence in contracts for their sale. *Kelly v. Marshall*, 172 Pa. 396, 33 Atl. 690, 18 M. R. 317. And where the lease is in litigation, the buyer takes no greater rights than the assignor had at the date of the assignment. *Turben v. Douglas* (Okla.) 183 Pac. 881.

Sublease.

The sale by the lessee of a gas well, of the gas flowing from it, the purchaser being placed in possession, is really a sublease of the well. *Stone v. Marshall Oil Co.*, 188 Pa. 602, 41 Atl. 748, 1119, 19 M. R. 593. A sublease is not an encumbrance. *Smith v. United Crude Oil Co.*, 179 Cal. 570, 178 Pac. 141.

Purchase of an undivided interest in the leased premises does not necessarily merge the two titles. *Patterson v. United Natural Gas Co.*, 263 Pa. 21, 105 Atl. 828.

An assignment of royalties does not come within the recording Acts, the royalty being personal property. *Farmers & Merchants' State Bank v. Tullos* (Tex. Civ.) 211 S. W. 847.

The sublessees of an oil lease are chargeable with the default of the original lessee and can not claim protection as innocent purchasers without notice, and are chargeable also with knowledge of the form and effect of the original lease. *Hitson v. Gilman*, 220 S. W. 140 (Tex. Civ.).

CHAPTER 25.

LEASE. SURFACE RESERVES. EVICTION.

An oil lease granting the exclusive right to mine for oil and the possession of so much of 430 acres as may be necessary therefor, does not give the lessee the right to cultivate, or use for residence any part of the land. *Fowler v. Delaplain*, 79 Ohio St. 279, 21 L.R.A.(N.S.) 100, 87 N. E. 260.

A lease of a 40 acre tract excepting 10 acres on which no oil wells were to be sunk gives the lessee the right to the oil under those 10 acres and the lessor cannot let them for oil sinking to others. *Brown v. Spilman*, 155 U. S. 665, 39 L. ed. 304, 15 Sup. Ct. 245.

Where by consent of the lessor the lessee drills a well within the excepted ground it is the same as if such ground had not been excepted. *Balfour v. Rensell*, 167 Pa. 287, 31 Atl. 570, 18 M. R. 202.

Where the oil lessee was not allowed to use a cultivated enclosure, whether the area was in cultivation before the well was started was held a question of fact. *Barnsdall Oil Co. v. Leahy*, 195 Fed. 731, 115 C. C. A. 521.

In *O'Neil v. Sun Co.* (Tex. Civ.) 123 S. W. 172, a lease provided for the sinking of three wells with the option to the lessee to release the unworked premises and where the lessor had himself sunk a well on the demised ground not released, its oil product belonged to the lessee.

Conveyance of the land by the lessor without reserving lessees rights is an eviction and determines the lessees liability for rent. *Mathews v. People's Natural Gas Co.*, 179 Pa. 165, 36 Atl. 216, 18 M. R. 552.

The commencement of a suit against the lessor does not operate as an eviction of the lessee. *Commings v. Guaranty Oil Co.*, 29 Cal. App. 139, 154 Pac. 882.

When a second lessee makes his peace with a prior lessee and is let into possession, he cannot treat the prior lease as an eviction by his lessor. *Horberg v. May*, 153 Pa. 216, 25 Atl. 750.

CHAPTER 26.

LEASE. ABANDONMENT.

The rights of the lessee may be lost by abandonment which is practically the same thing as breach of the implied covenant to sink, or to work with diligence.

Abandonment is a question of intention, but this intention is constantly proved by necessary inference from Acts: removal of machinery and quitting the premises is proof of it. *Calhoon v. Neely*, 201 Pa. 97, 50 Atl. 967, 21 M. R. 754. When the unsuccessful search for oil is abandoned, the inchoate title of the explorer for mineral is lost. *Garrett v. South Penn Oil Co.*, 66 W. Va. 587, 66 S. E. 741; *Eastern Oil Co. v. Coulehan*, 65 W. Va. 531, 64 S. E. 836. Long delay is proof of abandonment which will justify cancellation of the lease. *Chandler v. French*, 73 W. Va. 658, L.R.A.1915B 561, 81 S. E. 825; *Acme Oil, etc., Co. v. Williams*, 140 Cal. 681, 74 Pac. 296. The presence of a forfeiture clause is not necessary to allow of this result. *Smith v. Root*, 66 W. Va. 633, 30 L.R.A.(N.S.) 176, 66 S. E. 1005.

Except in the case of a perfect legal title to a corporeal hereditament, every right or interest in, title to, or ownership of property may be lost by abandonment. This rule applies to mining rights and privileges. *Aye v. Philadelphia Co.*, 193 Pa. 451, 74 Am. St. Rep. 696, 44 Atl. 555, 20 M. R. 177; *Wilmore Coal Co. v. Brown*, 147 Fed. 931, 943, affirmed in *Brown v. Wilmore Coal Co.*, 153 Fed. 143, 82 C. C. A. 295; *Derry v. Ross*, 5 Colo. 295, 1 M. R. 1.

In determining whether a lease had been abandoned all the facts are to be considered: An unexplained cessation of work would be sufficient proof. *Strange v. Hicks*, 188 Pac. 347 (Okla.).

It is a jury question on the issue in ejectment as to whether or not a lease had been abandoned. *Bartley v. Phillips*, 179 Pa. 175.

Testifying to Intent.

On the issue of abandonment a party may swear to his intentions in explanation of his acts. *Bartley v. Phillips*, 179 Pa. 175, 36 Atl. 217, 18 M. R. 542.

Re-entry Not Allowed.

Where the lessee has lost his rights by abandonment and lessor has brought suit to quit the title, the lessee by re-entry cannot revive his lost rights. *Ohio Oil Co. v. Detamore*, 165 Ind. 243, 244, 73 N. E. 906.

Where an oil lease is abandoned it cannot be renewed without the consent of the lessor. A second lease to the same party annuls the first. Abandonment of oil and gas leases will be more readily found than in other instances. *Harris v. Riggs*, 63 Ind. App. 201, 112 N. E. 36.

Facts Amounting To.

Where a lease calls for one well which is sunk and breach of such covenant is made the sole ground for forfeiture, the Court will not make failure to sink a second well a ground of forfeiture—but the failure to sink a second well and quitting the premises without intention to return is the abandonment of the lease. *Grubb v. McAfee* (Tex.) 212 S. W. 464.

Lessee under a fifteen year lease sank a dry well, and took away his derrick but left the casing. Eleven years after, and after a second lease had been let, he re-entered and sank a paying well. The Court held that the abandonment was complete and should not have been left to the jury, with the usual phrases about the distinctions between oil and other leases. Two of the judges dissented and on examination of the facts, it will be seen that there was plausible excuse for the long delay. The Court found that the second lessee also had abandoned and the case hinged on side issues between the lessor and the second lessee. *Conkling v. Krandusky*, 127 App. Div. 761, 112 N. Y. Supp. 13.

Where the lessee sank one dry well, quits operations and makes no attempt to further explore, it is an abandonment of the

lease. *Foster v. Elk Fork O. & G. Co.*, 90 Fed. 178, 32 C. C. A. 560.

Millar v. Mauney, 219 S. W. 1028 (Ark.) is a curious case on a lease of a diamond mine where war conditions and harassing the lessees by suits and prosecution, were introduced to excuse alleged abandonment.

In *Bois D'Arc Creek Oil & Gas Co. v. South West Oil Corporation*, 219 S. W. 1115 (Tex. Civ.) on its facts the Court seems to hold that the reassignment of leases or return of the papers was a material condition in an oil lease upon which to predicate the right to abandon.

Waiver of Notice.

Altho the contract calls for notice of abandonment, if the abandonment is complete, no notice is required. *East Jersey Iron Co. v. Wright*, 32 N. J. Eq. 248.

CHAPTER 27.

FORFEITURE.

Forfeiture is an adjudication of a man's case in his own favor without process of law and yet it is a necessary remedy where speedy action is essential and when resisted by the tenant, is constantly enforced by decree in oil and gas lease cases. But because it is a summary remedy and liable to be oppressively used it is and should be restricted by equitable conditions.

A lessor who had obtained all the benefit he could expect from the lease will not be heard to set it aside on technical grounds. *Rush-Everett Co. v. Vivian Oil Co.*, 128 La. 886, 55 So. 564.

There is a distinction between abandonment and forfeiture. Forfeiture is an enforced release not resting on intention while abandonment involves the intention of the lessee to quit. But abandonment is the predicate upon which by operation of law forfeiture is based. *Garrett v. South Penn Oil Co.*, 66 W. Va. 587, 66 S. E. 741.

Burden of Proof.

The proof of forfeiture for failure to make payments is upon the party alleging such forfeiture. *Baird v. Atlas Oil Co.*, 84 So. 366 (La.).

When Not Enforceable.

The most general statement is that as a rule it is not allowed upon breach of covenant merely implied, nor where the lessors remedy at law is adequate nor where the lessor by estoppel, laches, waiver or acts of oppression has lost his right to this relief.

An ambiguous and uncertain forfeiture clause in a lease will not be enforced. *Decker v. Kirklicks* (Tex.) 216 S. W. 385. And in no event will forfeiture be enforced where the default

was brought about by the lessors bad faith. *Doddridge County Oil & Gas Co. v. Smith*, 154 Fed. 970. And a suit to annul an oil lease will not lie where the complaining party is holding on to benefits received and is unable or unwilling to restore the defendant to the status quo. *Nabors Oil, etc., Co. v. McCormick*, 145 La. —, 81 So. 766.

After Sale.

A lessor who has either sold the land or assigned the royalty can no longer declare a forfeiture. *Baird v. Atlas Oil Co.*, 84 So. 366 (La.).

Propositions Decided.

The numberless cases on the forfeiture of oil and gas leases seem with a fair amount of unanimity to decide the following propositions:

1. That the forfeiture clause is for the protection of the lessor which is self evident.
2. That this class of leases is an exception to the rule, that in equity forfeiture is not favored.
3. That forfeiture needs no decree but is automatic where the lessee quits the premises or a peaceable entry can be made.
4. That failure to start a well within a reasonable time is ground for forfeiture; and the same when lessee has the option to work or pay rent and fails to do either.
5. That it will not be decreed for breach of an implied covenant, but the implied covenant to sink is an exception to this rule. Nor will it be allowed on other covenants when the forfeiture clause is limited to certain covenants.
6. That acceptance of rent excuses failure to work.
7. That where a right to forfeit has accrued and it is not automatic, the lessor must demand performance, before he is in position to enforce this remedy.
8. That while forfeiture as a rule is not enforced where there is ample remedy at law, this rule will not be applied where the damages cannot be ascertained nor where the lease itself expressly provides for forfeiture.

9. That where a cause of forfeiture has accrued, it may be waived by acceptance of delay rent or lost by estoppel.

10. That after dealing loosely with the lessee for a long time, lessor cannot abruptly change his attitude and insist on strict performance.

11. That where the default of the lessee is excusable he may be relieved in equity by alternative decree allowing performance.

The cases cited below illustrate these propositions under the varying conditions which litigation always presents.

Forfeiture Clause Is for Benefit of Lessor.

The forfeiture clause is for the protection of the lessor, and to be exercised at his option. *Woodland Oil Co. v. Crawford*, 55 Ohio 161, 34 L.R.A. 62, 44 N. E. 1093; *Dill v. Frazee*, 169 Ind. 53, 79 N. E. 971; *Henne v. South Penn Oil Co.*, 52 W. Va. 192, 43 S. E. 147; *McKee v. Grimm*, 57 Okla. 680, 157 Pac. 308.

The reservation of the right to forfeit is for the benefit of the lessor and until he elects to declare it, the liability for rent continues. *Mathews v. People's Natural Gas Co.*, 179 Pa. 165, 36 Atl. 216, 18 M. R. 552; *Roberts v. Bettman*, 45 W. Va. 143, 30 S. E. 95, 19 M. R. 326.

The forfeiture clause is for the benefit of the lessor and to be used at his option. And such terms as that the lease "shall be of no effect" or "can only be renewed by mutual consent" are merely different phrases to mean the same thing. *Jones v. Western Pennsylvania Natural Gas Co.*, 146 Pa. 204, 23 Atl. 386.

Exception to Rule.

The rule that forfeitures are not favored does not apply to oil and gas leases. *Risch v. Burch*, 175 Ind. 621, 95 N. E. 123; *Gadbury v. Ohio, etc., Gas Co.*, 162 Ind. 9, 62 L.R.A. 895, 67 N. E. 259, 22 M. R. 680; *Huggins v. Daley*, 99 Fed. 606, 40 C. C. A. 12, 48 L.R.A. 320, 20 M. R. 377.

In *Brown v. Vandergrift*, 80 Pa. 142, it was distinctly held that the fugacious and wandering incidents of oil made its lease-

ing exceptional so that forfeiture would be enforced by a Court of Equity.

The case of *Brewster v. Lanyon Zinz Co.*, 140 Fed. 801, 72 C. C. A. 213, goes fairly into the reasons why the usual rule that equity will not enforce a forfeiture, does not apply to oil and gas leases.

Where forfeiture is a legitimate issue before the jury, the Courts should not charge to the effect that the law does not favor forfeiture. *Munsey v. Marnet Oil, etc., Co.* (Tex. Civ. App.) 199 S. W. 686.

When Automatic.

A judicial forfeiture is not necessary where the lease provides for it and the lessee has abandoned operations. *Gillette v. Mitchell* (Tex. Civ. App.) 214 S. W. 619.

Where the lease provides that a well shall be sunk or delay rental paid, in default of which the lease shall "terminate as to both parties" it is an alternative condition. If lessee complies with neither of his options, time being of their essence, "the lease terminated by its terms," and refusing relief to the defaulting lessee is not declaring a forfeiture. *Curtis v. Harris* (Okla.) 184 Pac. 574; *Elliott v. Crystal Springs Oil Co.* (Kan.) 187 Pac. 692.

The clause that the lease on certain defaults shall be null and void is not automatic, but requires the action of the lessor to make it void. *Edmonds v. Mounsey*, 18 M. R. 384, 15 Ind. App. 399, 44 N. E. 196; *Bartley v. Phillips*, 179 Pa. 175, 36 Atl. 217, 18 M. R. 542.

Delay to Sink, Perform or Pay.

The least favored of all forfeitures are those founded upon mere delay to pay money and when the lessee has repeatedly accepted payments when overdue he cannot forfeit the lease for delay on a later payment. *Denniston v. Kenova Oil Co.*, 220 S. W. 1078 (Ky. App.).

Equity will protect the lessor by a decree of forfeiture for want of diligence to operate and the lessor is not confined to

his action for damages. *Blackwell Oil, etc., Co. v. Whitesides* (Okla.) 174 Pac. 573. But where time is not a material incident to the performance of the lease terms, equity will not enforce forfeiture for inadvertent delay. *Lynch v. Versailles Fuel Gas Co.*, 165 Pa. 518, 30 Atl. 984, 18 M. R. 149. And the lessor may be restricted to his action for damages. *Barker v. Dale*, 3 Pittsb. Rep. 190, Fed. Cas. No. 988, 8 M. R. 597.

After reasonable time to sink, lessor is entitled to cancellation. *Davis v. Riddle*, 25 Colo. App. 162, 136 Pac. 551; *Kimball Oil Co. v. Keeton*, 31 Ky. Law Rep. 146, 101 S. W. 887. Two years delay justifies forfeiture. *Gadbury v. Ohio, etc., Gas Co.*, 162 Ind. 9, 62 L.R.A. 895, 67 N. E. 259, 22 M. R. 680.

Where a lessee is in default and makes no effect to perform until after a paying well in the neighborhood had been struck, he has no standing in the Court of equity. *Bearman v. Dux Oil, etc., Co.* (Okla.) 166 Pac. 199.

The failure of the lessee to sink a second well where under implied covenant to sink such well and the danger of drainage are grounds on which to base the forfeiture of his lease. This case contains a full review of cases supporting forfeiture. *Brewster v. Lanyon Zinc Co.*, 140 Fed. 801, 72 C. C. A. 213.

Where the lessee was to complete a well within a year or pay \$40 for each additional quarter year of delay, the lease cannot be forfeited because the lessee waited until the last day of the year when he brought a load of rig material to the premises. *Washburn v. Gillespie*, 261 Fed. 41.

Where a present consideration is paid for the lease and forfeiture is not expressly provided for none can follow from neglect or delay to drill. *Chandler v. Hart*, 161 Cal. 405, Ann. Cas. 1913B 1094, 119 Pac. 516.

A lease covenanting to begin work within a year or pay for delay gives the option to drill or pay, and failure to do either made the lease forfeitable. *Mellton v. Cherokee Oil, etc., Co.* (Okla.) 170 Pac. 691.

Lessor may refuse tender of rent and enforce forfeiture after long delay to tender and the execution of a second lease. *Brown v. Vandergrift*, 80 Pa. 142.

Not Allowed for Breach of Implied Covenants.

The general rule is that the lease must state conditions on breach of which forfeiture may be declared. *Smith v. People's Natural Gas Co.*, 257 Pa. 396, 101 Atl. 739; *Cochran v. Gulf Refining Co.*, 139 La. 1010, 72 So. 718; *Alford v. Dennis*, 102 Kan. 403, 170 Pac. 1005. But breach of the implied covenant to sink is an exception to this rule, because damages afford no adequate remedy. *Sledge v. Stolz* (Cal. App.) 182 Pac. 340.

Where certain breaches under the lease call for forfeiture, forfeiture will not be implied from breaches of other covenants. The lessor's remedy is in damages. *Core v. New York Petroleum Co.*, 52 W. Va. 276, 43 S. E. 128; *Harris v. Ohio Coal Co.*, 57 Ohio 118, 48 N. E. 502, 19 M. R. 157; *Davis v. Chautauqua Oil & G. Co.*, 78 Kan. 97, 96 Pac. 47.

Acceptance of Rent.

Accepting rent after cause of forfeiture accrued, waives the forfeiture. *Maud Oil, etc., Co. v. Bodkin* (Okla.) 180 Pac. 959.

Acceptance of the delayed rent, is a waiver of the covenant to drill. *Beatty Oil & Gas Co. v. Blanton*, 245 Fed. 979; *Johnson v. Armstrong*, 81 W. Va. 399, 94 S. E. 753. Or any part of it. *Ohio Valley Oil, etc., Co. v. Irvin Dev. Co.*, 184 Ky. 517, 212 S. W. 110. Where lessee paid rent for thirteen years and was one day late in making the payment for the fourteenth year, the enforcement of forfeiture would be unconscionable. A tender before the lessee takes action to enforce the forfeiture, will save the lease. *McKean Natural Gas Co. v. Wolcott*, 254 Pa. 323, 98 Atl. 955.

Where gas is produced, but not marketed, that fact does not authorize the lessor to forfeit the lease where the lessee is willing to pay the rent. *McGraw Oil & G. Co. v. Kennedy*, 65 W. Va. 595, 28 L.R.A.(N.S.) 959, 64 S. E. 1027.

Demand When Necessary.

Where the lessee was to begin a well within one year, or pay twenty-five cents an acre for each year of delay, it was held that the real consideration was the sinking of the well, but the lessor

must first notify the lessee that he will no longer accept rent and will insist on sinking before he can claim forfeiture. *Warren Oil, etc., Co. v. Gilliam*, 182 Ky. 807, 207 S. W. 698. To same effect, *New American Oil, etc., Co. v. Troyer*, 166 Ind. 402, 76 N. E. 253, 77 N. E. 739.

Acceptance of rent permits delay to work and lessor must demand development before he can cancel. *Plumber v. Southern Oil Co.* (Ky.) 214 S. W. 896.

Under a departmental oil and gas lease, the lessor cannot declare a lease forfeited on ten days' notice—but must give notice that unless the lease is complied with in ten days he will declare a forfeiture. *Pierce Oil Corp. v. Schacht* (Okla.) 181 Pac. 731.

Under the null and void clause, the lessor must elect to declare a forfeiture—but the declaration of forfeiture is no release for accrued damages. *Leatherman v. Oliver*, 17 M. R. 526, 151 Pa. 646, 25 Atl. 309.

Express Provision for Forfeiture.

The rule of nonforfeiture where damages may be recovered does not apply where the lease expressly provides for forfeiture. *Powers v. Bridgeport Oil Co.*, 238 Ill. 397, 403, 87 N. E. 381.

Not Allowed Where Relief at Law.

Smith v. People's Natural Gas Co., 257 Pa. 396, 101 Atl. 739. And the lessor has the burden of proof to show that he cannot be so compensated. *Rembarger v. Losch* (Ind. App.) 118 N. E. 831. Equity will not cancel a lease where ejectment is a complete remedy. *Patterson v. United Natural Gas Co.*, 263 Pa. 21, 105 Atl. 828.

Where the defendant was under agreement to sink and operate wells, failure to perform being alleged, it was held that the remedy was by action at law for damages and not in equity by bill for forfeiture. *Ammons v. South Penn Oil Co.*, 47 W. Va. 610, 35 S. E. 1004; *Core v. New York Petroleum Co.*, 52 W. Va. 276, 43 S. E. 128.

The rulings in these last paragraphs taken together plainly show that damages is the normal remedy as in other cases be-

tween landlord and tenant unless the tenant has conceded the right to forfeit and maintain the general principle that a Chancery Court has no duty to perform until a Court at law has shown itself unable or unwilling to relieve.

The Absence of a Market

is such an excuse for breach of covenant to drill as will prevent forfeiture. The remedy if there is a breach, is in damages. *Poe v. Ulrey*, 233 Ill. 56, 84 N. E. 46.

Waiver, Estoppel, Laches, Oppression.

After lessee has paid rent for many years to enforce forfeiture for one days' delay, would be unconscionable. *McKean Natural Gas Co. v. Wolcott*, 254 Pa. 323, 98 Atl. 955. Equity will not enforce forfeiture for a short and excusable delay to pay rent. *Aggers v. Shaffer*, 256 Fed. 648. After accepting many delay rentals, lessor cannot summarily declare forfeiture. *Johnson v. Armstrong*, 81 W. Va. 399, 94 S. E. 753. He cannot lull the lessee by his indulgence and later suddenly change his attitude and enforce forfeiture for an already condoned default. *Pyle v. Henderson*, 65 W. Va. 39, 63 S. E. 762.

Forfeiture may be waived or the lessor estopped by some act from enforcing it. *Munsey v. Marnet Oil, etc., Co.* (Tex. Civ.) 199 S. W. 686.

A waiver of default in sinking a seventh well within the time limited, is proved by the fact of acquiescence to delay in sinking the earlier wells. *Duffield v. Hue*, 129 Pa. 94, 18 Atl. 566, 17 M. R. 253.

Forfeiture will not be enforced for short delay where lessor has allowed lessee to believe that forfeiture would not be enforced for such default. *Steiner v. Marks*, 18 M. R. 320, 172 Pa. 400, 33 Atl. 695.

Equity will not enforce a forfeiture when it has been waived and a single cotenant has the right to make the waiver. *Schmidt-Blakely Coal Co. v. Hembree*, 134 Ark. 396, 205 S. W. 111.

Where lessor's title being found defective he promises to make it good, he cannot under such status enforce a forfeiture or give

a valid second lease. *Pyle v. Henderson*, 65 W. Va. 39, 63 S. E. 762.

Where the lessor after knowledge of lessees default allows him to make expenditures, it is a waiver of the forfeiture. *Lynch v. Versailles Fuel Gas Co.*, 165 Pa. 518, 30 Atl. 984, 18 M. R. 149; *Dellinger v. Smith*, 142 La. 1009, 77 So. 947; *Pierce Oil Corp. v. Schacht* (Okla.) 181 Pac. 731; *Owens v. Corsicana Pet. Co.* (Tex. Civ. App.) 169 S. W. 192.

Whether lessors acts justify the lessee in claiming a waiver is a jury question. *Steiner v. Marks*, 18 M. R. 320, 172 Pa. 400, 33 Atl. 695.

Relief in Equity.

Equity may relieve against, but will not enforce a forfeiture. *Newton v. Kemper*, 66 W. Va. 130, 66 S. E. 102. This is the general rule but qualified as above in most oil and gas cases.

Where there has been such a substantial compliance with the lease that gross injustice would be done by taking it from him, equity will grant him release as from a forfeiture. Interference of plaintiff with the lessee's work fortifies this position. *Eastern Oil Co. v. Coulehan*, 65 W. Va. 531, 64 S. E. 836.

Deposit of delay rental within three days after limited period, held to save the lease from forfeiture. *Ohio Valley Oil, etc., Co. v. Irvin Dev. Co.*, 184 Ky. 517, 212 S. W. 110.

Equity will relieve the tenant altho there has been a breach where lessor has not suffered by the delay. *Shaffer v. Marks*, 241 Fed. 139.

The unexpectedly large flow of oil, rendering impossible literal compliance with the lease is considered by the Court in refusing the forfeiture and receivership demanded by the complainant. *Chicago A. Oil, etc., Co. v. United States Petroleum Co.*, 12 M. R. 570, 57 Pa. 83.

When lessor has refused to accept rent tendered and sued for damages which he has no right to recover, such conduct excuses the defendant from further payments; his action has been such that he cannot put the defendant in default. *Leonard v. Busch-Everett Co.*, 139 La. 1099, 72 So. 749.

Wrongful declaration of forfeiture will excuse starting to sink. *Johnson v. Armstrong*, 81 W. Va. 399, 94 S. E. 753.

A lessor who sells part of the demised land cannot enforce forfeiture as to the land sold, for a subsequent breach. *Brewster v. Lanyon Zinc Co.*, 140 Fed. 801, 72 C. C. A. 213; *Cochran v. Gulf Ref. Co.*, 139 La. 1010, 72 So. 718.

The lessee will be relieved on alleged failure to pay an annual rental, when the payment was in fact made but owing to the mistake of a clerk was sent to the lessor instead of to his assignee. *Brunson v. Carter Oil Co.*, 263 Fed. 935.

Forfeiture is a harsh remedy to be cautiously applied. Waiting for a pipe line held to excuse a delay of three years in connection with the fact that lessees were continually at work sinking several wells. *Strange v. Hicks*, 188 Pac. 347 (Okla.).

Relief When Denied.

Where the lessee has neither sunk a well nor paid the delay rental, equity will not relieve against the forfeit provided for in the lease. *Dill v. Frazee*, 169 Ind. 53, 79 N. E. 971.

Acceptance of a delay rental check, one day after it was due, held no assent to like delay on a later payment. In this case the Court refused to release from forfeiture, altho check had been sent in due time and was delayed in the mail. *Frank Oil Co. v. Belleview Gas & Oil Co.*, 29 Okla. 719, 43 L.R.A.(N.S.) 487, 119 Pac. 260.

In *Weiss v. Claborn*, two days after the time expired the lessee tendered the delay rental which was refused and the Court held that the lease should be cancelled. The case states the distinction between a covenant and condition subsequent. 219 S. W. 884 (Tex. Civ.).

Practice.

There is a clear distinction between the case required to enforce a forfeiture and the facts sufficient to relieve from it. *Smith v. People's Natural Gas Co.*, 257 Pa. 396, 101 Atl. 739.

Under the California Statute notice of forfeiture must be

signed by all the lessors. *Jameson v. Chanslor Canfield, etc. Oil Co.*, 176 Cal. 1, 167 Pac. 369.

Third parties cannot take advantage of a clause in a lease giving lessor a right to forfeit. *Bearman v. Dux Oil Co.* (Okla.) 166 Pac. 199; *Brennan v. Hunter* (Okla.) 172 Pac. 49.

A covenant by the assignor of an interest in an oil lease that he will pay the rental and prevent a forfeiture is broken by a sale thereafter of the lease to another, who makes a surrender of it, or who by failure to pay the rental suffers a forfeiture. *Millan v. Bartlett*, 69 W. Va. 155, 71 S. E. 13.

Choice of Remedies.

The lessor cannot enforce forfeiture and later collect the money for the nonpayment of which forfeiture was declared. *Stine v. Producers Oil Co.* (Tex. Civ. App.) 203 S. W. 126; *Wilson v. Goldstein*, 152 Pa. 524, 25 Atl. 493.

The effect of forfeiture is to prevent any further relief; the right to surrender and the right to specific performance are both gone. *Bearman v. Dux Oil Co.* (Okla.) 166 Pac. 199.

Alternative Decree.

Forfeiture may be decreed subject to the right of lessee to relieve himself by paying up the default. *Stine v. Producers Oil Co.* (Tex. Civ. App.) 203 S. W. 126. And in *Alford v. Dennis*, 102 Kan. 403, 170 Pac. 1005, the lessee was allowed opportunity to perform.

Forfeiture of part of the demised tract may be decreed excepting parcels where wells have been diligently developed. *Pelham Pet. Co. v. North*, 188 Pac. 1069 (Okla.).

Special Instances.

Where a company was bound to do the annual labor on a large oil tract, its breach of performance on a part of the tract did not forfeit its rights on the acreage which it did protect. *Jameson v. Charslor-Canfield, etc., Oil Co.*, 176 Cal. 1, 167 Pac. 369.

Under a lease for two years one well was sunk producing a

small yield of oil; the Court held under the facts that the land was not being held for speculating purposes and refused to forfeit the lease. *Hughes v. Busseyville Oil, etc., Co.*, 180 Ky. 545, 203 S. W. 515.

The landlord sued to quiet his title against the lessee calling for the drilling of a well within twelve months or pay \$20 yearly rental until the well was drilled. There was a clause that the lessor was to have gas from the premises for the buildings. The complaint alleged that no well had been sunk or any money paid with other supporting averments. The complaint was held good. The lessee furnished free gas from other premises which was accepted in lieu of rent. The answer was held a defense and that the lease was not forfeited. *Indiana Natural Gas, etc., Co. v. Leer*, 34 Ind. App. 61, 72 N. E. 283.

CHAPTER 28.

OPTION.

An option may be either separate or, more usually, combined with the lease and where so combined while they are construed together they may be so worded that the forfeiture of the one may not mean the ending of the other. *Mathews Slate Co. v. New Empire Slate Co.*, 122 Fed. 972.

The points usually leading to controversy arise upon mutuality, the consideration or want of consideration, time, and the extension of time.

Consideration and Mutuality.

It is of the very essence of an option that it should not be mutual. The optionee "pays his money or performs his promise" which makes a good consideration for the "right of choice." *North Western Oil Co. v. Branine* (Okla.) 175 Pac. 533; *Pittsburg Vitrified, etc., Bricks Co. v. Bailey*, 76 Kan. 42, 12 L.R.A. (N.S.) 745, 90 Pac. 803.

Agreement to drill well as a matter of course was held consideration in *Starr v. Crenshaw* (Mo.) 213 S. W. 811. The same as to agreement to work a mine. *Clarno v. Grayson*, 30 Ore. 111, 46 Pac. 426.

An option to convey or renew a lease, though not mutual, when given for a consideration, is a binding contract forfeiture of which will not be decreed. *Brunson v. Carter Oil Co.*, 259 Fed. 656. Where both bonus and rent have been paid, the option is upon good consideration and the surrender clause also, is supported. *Jackson v. Pure Oil Co.* (Tex. Civ. App.) 217 S. W. 959.

An option in an oil lease although unilateral, if supported by valid consideration can be enforced the same as any other contract. *Hunter v. Gulf Prod. Co.*, 220 S. W. 163 (Tex. Civ.).

The consideration of \$1 is held to be valid to support an op-

tion in *Emde v. Johnson* (Tex. Civ. App.) 214 S. W. 575, tho the contract in that case was in fact a lease and not an option. But it cites the authorities which uphold generally the \$1 consideration.

Failure to make the first payment determines both lease and option. *Hazzard v. Johnson* (Cal. App.) 187 Pac. 121.

Naked Option.

A naked option may be withdrawn at any time; it is only a continuous offer to sell, but if a consideration is paid or if it is accepted before a withdrawal it becomes a binding promise. *Threlkeld v. Inglett*, 289 Ill. 90, 124 N. E. 368.

A naked option—that is, a mere promise to sell or lease, whether verbal or written, made or given without consideration, until something is done under it or paid upon it, is void. *Smith v. Reynolds*, 8 Fed. 696, 3 McCrary, 157, 2 M. R. 227; *Finnerty v. Fritz*, 5 Colo. 174, 1 M. R. 437; *Gordon v. Darnell*, 5 Colo. 302, 2 M. R. 220; *Cortelyou v. Barnsdall*, 236 Ill. 138, 86 N. E. 200.

An option without consideration may be revoked by letter, and a loss to the promisee was held no sufficient consideration for the promise of the option. *Texas Co. v. Dunn*, 219 S. W. 300.

Time.

That time is of the essence of the option in any sort of mining property has been so repeatedly decided that it is now assumed as a matter of course, even if the contract does not use the phrase: that time shall be of the essence of the contract. *Smith v. Beebe*, 31 Ida. 469, 174 Pac. 608; *Mackey Wall Plaster Co. v. United States Gypsum Co.*, 244 Fed. 275; *Christie's Appeal*, 85 Pa. 463, 9 M. R. 42; *Brown v. Vandergrift*, 80 Pa. 142. In *Levy v. Hoffman*, 235 Fed. 46, 148 C. C. A. 540, it was attempted to prove a custom that after the period for payment limited, the purchaser had further time to examine the title and otherwise get ready to perfect the purchase, but this was disallowed by the Court.

On the expiration of the time limit the owner is entitled to repossess himself of the property including fixtures which the

optionee had agreed should become parcel of the realty and such repossession is in no sense a rescission of the contract. *Smith v. Beebe*, 31 Ida. 469, 174 Pac. 608.

Time is of the essence of the contract in an oil lease and no particular form of words is necessary to express it, under the Oklahoma Statute requiring time when of the essence to be so expressed in the contract. *Mitchell v. Probst*, 52 Okla. 10, 152 Pac. 597.

Extension of Time.

The extension of time on an option is of constant occurrence and the question of whether any consideration at all is required for such extension, or if required, what is sufficient consideration has been often passed on.

The consideration of \$1 and lessee's agreement to drill adjoining ground of lessor is good consideration for extension of time. *Downey v. Gooch*, 240 Fed. 527. And a promise to do the annual labor is sufficient consideration. *Stamey v. Hemple*, 173 Fed. 61, 97 C. C. A. 379. This case further holds that the weight of authority is that a verbal promise to extend time is valid. Where the conditions are changed no new consideration is needed. *Russel, etc., v. Lambert*, 14 Ida. 284, L.R.A.1915B 20, 94 Pac. 54. In L.R.A.1915B is a full citation of the holdings that mere enlargement of time for performance may need no new consideration at all.

Possession—Working Lease and Option.

The right of possession may arise by implication from the terms of an executory contract. *Francis v. West Virginia Oil Co.*, 174 Cal. 168, 162 Pac. 394. The holder of an option allowed to work the mine becomes a lessee. *Nichelson v. Smith*, 31 Ida. 544, 174 Pac. 1008.

In *Johnson v. Clark*, 174 Cal. 582, 163 Pac. 1004, an option contract is construed and it was held on the facts that retaining possession and payment on account did not merge the option into an executory contract to drill.

A contract allowing a party to take possession, work the placer and pay royalty with the option to purchase—but if he

declined to purchase the owner was to pay him his net loss and resume possession was construed as neither conveyance nor lease, but a mere license. *In re Seward Dredging Co.*, 242 Fed. 225, 155 C. C. A. 65.

The payment of an independent consideration is good consideration for the optional privileges allowed to the lessee. *Aycock v. Reliance Oil Co.* (Tex. Civ. App.) 210 S. W. 848; *Pyle v. Henderson*, 65 W. Va. 39, 63 S. E. 762.

Rent for Delay.

Lease providing for continuous payment of delay rentals, construed as an option renewable from period to period by payment of the rent. *Frank Oil Co. v. Belleview Gas, etc., Co.*, 29 Okla. 719, 43 L.R.A.(N.S.) 487, 119 Pac. 260.

Where the lease provided that a well should be drilled within a fixed time and if none drilled within that time, lessee should pay an annual rent, it was an option and gave the lessor the right to cancel without notice if not complied with. *Mitchell v. Probst*, 52 Okla. 10, 152 Pac. 597.

A lease for a fixed term on a royalty providing for the completion of a well within a year, but with the clause allowing unlimited delay rentals and with the right to surrender was construed as a mere option in *Owens v. Corsicana Pet. Co.* (Tex. Civ. App.) 169 S. W. 192. But see the later case of *Pierce Fordyce Oil Assoc. v. Woodrum* (Tex. Civ. App.) 188 S. W. 245.

An oil lease giving an option to begin within a fixed time or to pay a delay rental is a contract upon condition subsequent and is valid. *Priddy v. Green*, 220 S. W. 243 (Tex. Civ.).

Speculative Purpose.

An option for speculative purposes based on no legal consideration will not be specifically enforced. *Gillespie v. Fulton Oil, etc., Co.*, 140 Ill. App. 147. On the other hand such an option on proper bill will be cancelled. *Cortelyou v. Barnsdall*, 140 Ill. App. 163. And on appeal of this last case it was held that a naked option until something is done to bind the lessee to action, is void, 236 Ill. 138, 86 N. E. 200. But in *Threlkeld v. Inglett*, 289 Ill. 90, 124 N. E. 368, it was held that it was no objection to

a bill for specific performance, that the contract was for speculative purposes. If there is a valuable consideration and no detriment to the land by damages of drainage we cannot see why the ultimate motive of the buyer should defeat his legal rights.

Special Instances.

A contract for the sale of a placer claim to be paid out of the proceeds was construed as an option. Such covenants of a contract do not run with the land. *Smith v. Jones*, 21 Utah 270, 60 Pac. 1104.

In *Pittsburg Vitrified, etc., Brick Co. v. Bailey*, 76 Kan. 42, 12 L.R.A.(N.S.) 745, 90 Pac. 803, a lease provided a fixed term and a royalty with the paying quantities clause and the surrender clause held that such contract strictly speaking is not a lease, but the sale of an option.

Stock had been sold to raise money to develop the mine. The contract was by resolution offering 100,000 shares at 10 cents per share for this purpose. Enough money was raised on a part of this allotment to put the mine on a pay basis. The optionee then demanded the full 100,000 shares at the 10 cents figure. But the Court ruled that the option was held for sale of enough stock to put the company on its feet and the optionee was defeated. *Woldson v. Richmond M., etc., Co.*, 102 Wash. 248, 172 Pac. 1162.

A sale of 2000 gals. of oil per day with the option to take the whole product of the well is valid and not satisfied by delivery of the 2000 gallons. *Blaffer v. Gulf Pipe Line Co.* (Tex. Civ. App.) 218 S. W. 89.

Repudiation.

Notice by the owner that he repudiated the option, releases the optionee from performance of any further conditions in the contract. *Starr v. Crenshaw* (Mo.) 213 S. W. 811.

A Chattel Real.

The title of a sublessee and optionee in default on the payments, is a chattel real and not subject to sale on execution. *Christies' Appeal*, 85 Pa. 463, 9 N. E. 42.

CHAPTER 29.

LICENSE.

A license is the permission of the owner to another to enter upon or use his land. It carries no estate or property and is not assignable and is no exclusion of the owner nor of other licensees, and is revocable at will.

But anything which has been extracted from the earth under a license becomes the property of the licensee and it cannot be arbitrarily revoked after expenditures without compensation.

It is self evident that a lease includes a license, but a license has not advanced to the dignity of a lease. It is further obvious that it closely approaches towards a lease and many informal permissions to work which would seem to have been intended as leases have been arbitrarily denounced as mere licenses.

A parol license to mine was given to one, followed by a written lease to another, on the same ground. The Court held that the giving of the lease revoked the license. Every license which covers some usufruct in the land, to be irrevocable, must be by deed—it is the grant of an incorporeal hereditament. *Kamp-house v. Gaffner*, 73 Ill. 453, 2 M. R. 256.

In *Grubb v. Bayard*, 2 Wall. Jr. 81, Fed. Cas. No. 5,849, 9 M. R. 199, the grantor had covenanted that grantee might dig, take and carry away all the iron ore, at a royalty; the Court held it to be an incorporeal hereditament—carrying no property right in the ore until severed; not exclusive in the grantee and not divisible, citing *Lord Mountjoy's case*, 4 Leonard 147, 9 M. R. 175; *Dark v. Johnston*, 55 Pa. 164, 93 Am. Dec. 732, 9 M. R. 283. A note to these cases in Thornton on oil and gas sec. 67 suggests as we do “it may well be doubted if the instruments did not give an actual interest in the real estate itself.”

An oil lease is more like a license than an estate in land. *Mitchell v. Probst*, 52 Okla. 10, 152 Pac. 597.

A contract giving the exclusive right to dig ore, is a license

and not a grant or demise, unless coupled with an interest or so far executed as to create a property right in the mineral; it is revocable at will. *East Jersey Iron Co. v. Wright*, 32 N. J. Eq. 248. This New Jersey case contains perhaps the clearest statement to be found, of the distinction between a license and a lease.

When Not Binding on Licensee.

Whether a document be called a lease or a license is immaterial on the interpretation of what it means. A contract requiring defendants to pay \$100 a month "while they are taking stone from his quarry" does not bind them to pay rent when they never began to take stone from the quarry. *Nega v. Barber Asphalt Paving Co.*, 17 Mo. App. 294.

To Use Rig, Not Revocable.

Where the lessor allows the lessee the use of a rig, casing and materials as an inducement to take the lease, he cannot revoke his license before the well is drilled. *Doddridge County Oil & Gas Co. v. Smith*, 154 Fed. 970.

License by One Cotenant.

The license to mine by one cotenant does not bind a dissenting cotenant. *Tipping v. Robbins*, 71 Wis. 507, 37 N. W. 427; *Omaha, etc., Refining Co. v. Tabor*, 13 Colo. 41, 16 Am. St. Rep. 185, 5 L.R.A. 236, 21 Pac. 925. But when ore is taken under such license the licensee is not generally held as a trespasser altho he must account. *Job v. Potton*, L. R., 20 Eq. 84, 14 M. R. 329.

Statutory Licenses.

Persons mining zinc and lead under a statute where the miner enters under the terms of a printed statement prescribing rules under which he works are licensees only and cannot maintain ejectment. *Springfield Foundry, etc., Co. v. Cole*, 130 Mo. 1, 31 S. W. 922.

CHAPTER 30.

CONTRACTS.

The Contract to Sink.

A contract to sink an oil well carefully and to both sides fairly drawn, should cover the depth, whether to a specific number of feet or to the paying sand; the time, the price and the terms of payment; should provide for accidents only too sure to occur, some of them, practically killing the well as far as drilled; for strikes; for a log of the drilling; for casing or tubing. It should reserve the right to order work stopped on payment for the feet completed (with a bonus in such case for the loss of profits to the contractor), because outside work in the meantime may have suggested that further sinking would be hopeless.

The construction of the contract is for the Court and it is error to leave it to the jury. *California Well Drilling Co. v. California Midway Oil Co.*, 178 Cal. 337, 177 Pac. 849.

The contractor is not bound to sink when owners fail to supply casing and other items as per contract. *Robinson v. Rispin*, 33 Cal. App. 536, 165 Pac. 979. In *Bain v. White*, 256 Fed. 428, the sinking was to be 2000 ft. defendant was to furnish the piping of a certain diameter. When the well caved in, the contractor demanded a smaller pipe, which implied a reduction in the size of the hole, which the defendant refused to furnish, and he was held to be acting within his rights.

Fishing for tools

is an ordinary risk in oil sinking, and the value of time lost by such accident cannot be added to the footage price for the sinking. *South Penn Oil Co. v. Latshaw*, 21 M. R. 600, 111 Fed. 598, 49 C. C. A. 478.

The alleged custom of the locality to compensate the oil sinker

for loss of tools lost in drilling, must be specially pleaded. *Dietz v. Nix* (Mo.) 216 S. W. 791.

Interference with Contractor.

Where the owner interferes with the contractor and without legal excuse stops the work contractor was allowed to recover his expenses already incurred, cost of removing the rig and loss of time while waiting instructions from the defendant. *Letcher v. Maloney* (Okla.) 172 Pac. 972.

And where after sinking over 3000 feet, trouble with gas occurred and the owner interfered, not allowing the contractor time to meet the difficulty, he was allowed to recover for the feet sunk at the contract price. The Court further intimated that a contractor may even have the right to sink a second well if he fail to complete the first. *Elwood Oil Co. v. McCoy* (Okla.) 179 Pac. 2. But the owner is not bound to furnish the piping for the second well as he was for the first. *Bain v. White*, 256 Fed. 428.

The contractor is not bound to sink when owner fails to supply casing and other items as per contract. *Robinson v. Rispin*, 165 Pac. 979, but the owner is not bound to furnish pipes which will reduce the size of the hole contracted for. *Bain v. White*, 256 Fed. 428.

Sinking to Paying Quantities.

An action for damages for breach of lessee's covenant to sink involved the question whether the lessee was released by finding oil in paying quantities, a small not a paying flow having been struck. The Court held that paying quantities had not been reached and that lessee was not released from his express contract to sink to the Mississippi lime. *Ardizzone v. Archer* (Okla.) 178 Pac. 263.

Down to Oil Sand.

There was a contract that the well should reach the oil sand. The Court considers what was the evidence necessary to prove that the stratum was reached and whose duty it was to test the

drillings and further hold that a barren oil sand was not the oil sand intended by the contract. There were two contracts involved and very heavy expenditure had been made, but the rulings of the Court were strict against the contractor. *California Well Drilling Co. v. California M. Oil Co.*, 178 Cal. 337, 177 Pac. 849.

The contract called for 3500 ft. of drilling or "into the oil sand." The burden is on the plaintiff to show that the sand reached was producing sand. *California Well Drilling Co. v. California M. Oil Co.*, 178 Cal. 337, 177 Pac. 849.

Good Clean Hole.

Well sinkers contracted to sink 2000 feet and deliver "a good clean hole." The hole was obstructed by a piece of piping so that the depth could not be measured. A contractor is impliedly bound to turn over the well in such shape that its depth and character can be ascertained. The Court found that it was not a good clean hole. *Bain v. White*, 256 Fed. 428.

Completed Well.

The words "after the completion of a well" are words of plain meaning. The well in question began to throw out oil and water forced by gas in such form that it could not be told whether it was, or was not a paying well. Then it was shot and yielded oil in large quantities. The Court held that it was not completed until it had been shot. *Uncle Sam Oil Co. v. Richards* (Okla.) 184 Pac. 575. An agreement between lessee and lessor that the 2000 ft. of drilling was a "completed well" binds both the lessor and his assignor. *Key v. Big Sandy, etc., Co.* (Tex. Civ. App.) 212 S. W. 300.

Where a well is accepted before reaching the contract depth, the contractor has the right to his pay for the number of feet drilled. *Robinson v. Rispin*, 33 Cal. App. 536, 165 Pac. 979.

There is a difference between drilling a well and completing a well. *Federal Betterment Co. v. Blaes*, 88 Pac. 555 (Kan.). The Court uses this language:

"When a well has been bored, that is, when enough boring

has been done to show the presence of oil—the lessee has but three courses open: 1. To complete it and see that it produces revenue. 2. To keep on drilling under the terms of the lease, or 3. To surrender all claims under the lease and suffer the lessor to resume the absolute control of his property.”

Measure of Damages.

When sunk and work not paid for the measure of damages is of course the contract price; when price not agreed on recovery is on a quantum valebat. Where work is stopped by the owner the measure of damages is not only the price per foot of the feet drilled but the reasonable profit of the whole contract.

In *North Healdton Co. v. Skelley*, defendants under contract, had drilled a well 1750 feet at a cost of \$8599.24 but found nothing. The defendants then contracted to sink 250 feet further, but after sinking a few feet they allowed reamer blocks to remain in the well so that it could not be sunk further, the petition alleging this to be a malicious destruction of the well. The Court held that if such allegations were proved, the plaintiffs were entitled to recover the original cost of the 1750 feet of sinking the amount necessary to continue it to the contract depth, or if completion of the old hole was impossible that the recovery should then be based on the cost of sinking a new well 2000 feet. *North Healdton Oil, etc., Co. v. Skelley*, 59 Okla. 128, 158 Pac. 1180.

Profits.

Profits to be earned from sinking oil wells are not too speculative or remote to be basis for damages. *Robinson v. Rispin*, 33 Cal. App. 536, 165 Pac. 979.

Cost of Casing.

Where the damages for failure to sink a well, are to be taken as the cost of the well, the cost of casing and equipment are not to be included. *Ardizonne v. Archer* (Okla.) 178 Pac. 263.

A contractor to drill a well does not include packer and tubing

nor covenant to safeguard against salt water. *Collier v. Monger*, 75 Kan. 550, 89 Pac. 1011.

Testing Barren Ground.

To the covenant of a lessee to sink a well, it is no defense that development on adjoining territory proved the ground to be barren. The Court ruled strictly that the lessor had the right to insist on the test of actual sinking. *Cochran v. Pew*, 159 Pa. 184, 28 Atl. 219.

In *Burrows v. Petroleum Dev. Co.* (Cal.) 184 Pac. 5, the contract to sink was between an option holder and the sinking company. The option expired before the well was completed and the sinking company became the purchaser. The rights of the parties in such complication considered, the final holding being that the sinking company was not bound in damages for failure to complete the well.

Evidence.

Letters written by the owner to the driller after the controversy arose, are self-serving and inadmissible. *Dietz v. Nix* (Mo.) 216 S. W. 791. After suit is started plaintiff cannot go back to the well for further work and so alter the facts and pleadings, on which the suit was started. *Hurd v. Wysong* (Wash.) 186 Pac. 301.

Contract Tying Up Right to Drill.

A contract tying up the right to drill for a long period not being a mere lease and the land not being drained—is valid. *Kroeger v. Martin* (Okla.) 180 Pac. 955.

Debt Payable Out of Mine.

When a party is to be paid out of what the mine produces the worker must be allowed time to produce it. *Johnson v. Geddes*, 49 Utah 137, 161 Pac. 910. But if he sells the mine or, as in this case the quarry, and so places it out of his power to comply, the debt becomes at once due. *Grant v. Warren*, 31 Cal. App. 453, 160 Pac. 847. And there are repeated decisions that when the

debt is to be paid out of the mine it becomes absolute after a reasonable time. *Mining Rights*, 15th Ed. P. 428.

Sales of Oil.

Contract for sale of so many barrels of oil means the statutory barrel subject to evidence that barrels of different gallon contents were intended. *Forsyth v. North American Oil Co.*, 53 Pa. 168, 11 M. R. 115; *Cullum v. Wagstaff*, 48 Pa. 300. Under a contract to deliver oil barrels on board "preparatory to running out on the first water," the vendor is bound to load the barrels. *Cullum v. Wagstaff*, 48 Pa. 300.

Where one of the owners of oil in a tank who had the right to dispose of his own share, but not of the whole, sold the entire contents, it was held a mere case for damages and not for injunction, oil being considered as a staple commodity. *Mason v. Norris*, 18 Grants ch. 500, 11 M. R. 140.

On a contract for sale of oil to be delivered in lots where both parties have acted loosely on deliveries and payments, one party cannot suddenly insist on literal compliance. *Forsyth v. North American Oil Co.*, 53 Pa. 168, 11 M. R. 115.

A person of long experience in the oil business is competent to testify to the gravity test of oil shipped. *Coad v. Pennsylvania Ry.* (Iowa) 175 N. W. 344.

Delivery.

An order to hold a party's oil in tank, when accepted transfers the possession of the oil. *First Nat. Bank v. Harkness*, 42 W. Va. 156, 32 L.R.A. 408, 24 S. E. 548.

Oil catching fire while in the act of loading on barges is not delivered. *Rochester, etc., Oil Co. v. Hughey*, 56 Pa. 322, 4 M. R. 282.

Repair of Tank.

A contract to put a leaky tank "in perfectly good repair," means to put it in as good condition as it ought to be considering the materials of which it was composed and does not mean the construction of a new tank on another and better plan. *Ardesco Oil Co. v. Richardson*, 63 Pa. 162, 11 M. R. 131.

Sales of Gas.

A contract to furnish natural gas is purely personal and does not bind the assignee of the seller. *Mound Valley, etc., Brick Co. v. Mound Valley Natural Gas, etc., Co.*, 258 Fed. 936.

When the lease called for gas measurement by meter but did not mention the pressure, the lessor was not allowed to prove that extra pressure was understood. *Noble v. Western Pa. Natural Gas Co.*, 255 Pa. 512, 100 Atl. 480.

A contract to sell the gas of the well for gasoline manufacture does not prevent the operator from using improved methods of stimulating oil production, even if such methods diminish the gasoline value of the natural gas. *Beeson v. Drake Oil Co.* (W. Va.) 97 S. E. 414.

The power of the legislature to regulate gas pressure is not affected by the fact that it will prevent the performance of a contract already made. Where a Statute makes an Act contracted for illegal, it excuses performance. *Jamieson v. Indiana N. G. Co.*, 128 Ind. 555, 12 L.R.A. 652.

Excess Gas.

In *Elk Natural Gas Co. v. Ridgway Light, etc., Co.*, 261 Pa. 295, 104 Atl. 546, there was a contract for the sale of surplus gas over that required for customers. The Court allowed the defendant to put his own construction on what was surplus.

Contract between Gas Well and Pipe Line.

Ely v. Wichita N. Gas Co., 99 Kan. 236, 161 Pac. 649, construes a contract where the gas well had agreed to furnish 5,000,000 cubic feet per day to a pipe line. The gas was to be merchantable and the party supplying the gas was defeated because it was shown that the gas delivered was not merchantable, because deficient in B. T. U. (British thermal units). The Court also held that the title to the gas passed only as delivery was made. The opinion refers to the fugacious character of gas which seems to us to have had little to do with the merits of the suit. The report sets out the long and formal agreement on which the suit was based and is instructive on this important class of contracts.

CHAPTER 31.

PARTNERSHIP.

What Creates the Relation.

Where there are several lessees, or where cotenants are working together, they become by implication partners in law. The distinctions between an ordinary partnership and a mining partnership are few, the most important being that the sale of his interest by one or the decease of one or more does not dissolve the partnership. This is based on the fact that the joint adventure and not the choice of associates, called in law *delectus personae* creates the partnership relation. The power to bind the company by note does not exist in a mining partnership.

The leading cases stating these distinctions are *Skillman v. Lachman*, 23 Cal. 198, 83 Am. Dec. 96, 11 M. R. 381 (with full notes in 83 Am. Dec. 103); *Duryea v. Burt*, 28 Cal. 569, 11 M. R. 395; *Manville v. Parks*, 7 Colo. 128, 2 Pac. 212. And they are most clearly discussed in *Childers v. Neely*, 47 W. Va. 70, 81 Am. St. Rep. 777, 49 L.R.A. 468, 34 S. E. 828, 20 M. R. 222. An oil syndicate is practically a partnership. *Oil Lease and Royalty Syndicate v. Beeler* (Tex. Civ. App.) 217 S. W. 1054.

A contract to explore for oil by prospecting new territory was held to constitute a partnership, though not a mining partnership in *Callahan v. Danziger*, 32 Cal. App. 405, 163 Pac. 65.

Cotenants are not mining partners unless they join in working the property. *Huston v. Cox*, 103 Kan. 73, 172 Pac. 992. They may become general partners or mining partners. Commencing to sink a test well does not make them mining partners. *Snider v. Davidson* (Kan.) 185 Pac. 724.

The co-ownership in the title is not enough to constitute the partnership relation and even the holding of a lease in their joint names, where not working together, does not constitute a partnership. *Huston v. Cox*, 103 Kan. 73, 172 Pac. 992. But

that the ownership is merely equitable, will not prevent the relation. *Harper v. Sloan*, 177 Cal. 174, 169 Pac. 1043.

Good Faith Between.

The utmost good faith is due between coadventurers: accounting decreed against party attempting to exclude his partner from benefit of option on one of the great Mexican oil properties. *Brown v. Leach*, 189 App. Div. 158, 178 N. Y. Supp. 319.

An oil partnership once formed applies to new acquisitions in the same line of business. *Rolshouse v. Wally*, 263 Pa. 247, 106 Atl. 227.

The tendency of modern decisions is to treat a mining adventure as a partnership and no associate in such joint adventure is allowed to make a secret profit. *Menefee v. Oxnam* (Cal. App.) 183 Pac. 379.

Majority Control.

Where the partners disagree in the working the majority has the right to control. *Childers v. Neely*, 47 W. Va. 70, 81 Am. St. Rep. 777, 49 L.R.A. 468, 34 S. E. 828, 20 M. R. 222; *Dougherty v. Creary*, 30 Cal. 290, 89 Am. Dec. 116, 1 M. R. 36; *Hawkins v. Spokane, etc., Co.*, 3 Ida. 650, 33 Pac. 40; *Patrick v. Weston*, 22 Colo. 45, 43 Pac. 446; *Markle v. Wilbur*, 200 Pa. 457, 50 Atl. 204, 21 M. R. 532.

Pay for Time.

The usual rule is that they cannot charge their time against the firm as expenses but this does not apply when one partner devotes his whole time to the business. *Rains v. Weiler*, 101 Kan. 294, L.R.A.1917F, 571, 166 Pac. 235.

Borrowing Money.

Although a mining partner has no right to give a firm note, he may acting in good faith borrow money necessary to carry on the business instead of making an assessment on his associates. *Rains v. Weiler*, 101 Kan. 294, L.R.A.1917F 571, 166 Pac. 235.

Assessments.

When funds are not forthcoming the natural result is suspension: the alternatives are to borrow money or to assess. The right to assess is no more than the right to request but not to compel advances from the delinquent associate and the assessment cannot proceed to a forfeiture, unless there has been some previous assent to that remedy.

But when assessments are made, remain unpaid, and the delinquent interest is sold, equity will not listen to the forfeited shareholder, where he has delayed his appeal for relief until the whole status of the property has been changed, by a sudden strike of great value. *Joseph v. Davenport*, 116 Iowa 268, 89 N. W. 1081, 22 M. R. 171.

Deserting Partner.

Where one partner abandons the lease, the deserted copartner has the right to surrender it. *United Mining Co. v. Morton*, 174 Ky. 366, 192 S. W. 79.

Lien.

A partner for his excess advances holds a lien against his copartner, that is, against the partnership, but such lien is of course, of no avail as against creditors of the firm. It was denied to a cotenant sinking an oil well in *Uncle Sam Oil Co. v. Richards*, 60 Okla. 63, 158 Pac. 1187. The cases on the lien of a copartner are cited in Mining Rights 15th Ed. 325.

CHAPTER 32.

NET PROFITS.

Net Profits Defined.

A covenant to pay a share of the net proceeds or net profits, a common clause in leases, creates a sort of partnership in the adventure but does not, where the lessor takes no active interest in the work, make him responsible for the debts of the lessee.

The terms "net proceeds" and "net profits" seem to be synonymous. *Nathan v. Porter*, 36 Cal. App. 356, 172 Pac. 170. Where on a sale part of the price was to be paid out of the "first money taken out of the ground" this was held to mean the gross, not the net proceeds of the buyers fourth interest. *Lesamis v. Greenberg*, 225 Fed. 449, 140 C. C. A. 481. And in *Blanck v. Pioneer Min. Co.*, 93 Wash. 26, 159 Pac. 1077, the contract was treated as of a speculative character, where both parties took chances.

In ascertaining the profit of a gas well, all expenses, including cost of pipe and material, payments for right of way and of salaries are to be deducted and gas used on the premises is to be counted the same as gas sold. *Stone v. Marshall Oil Co.*, 188 Pa. 602, 41 Atl. 748, 1119, 19 M. R. 593.

Working Interest.

A lease calling for one eighth of the oil as royalty and requiring the lessee to carry for the lessee a one-sixteenth interest means that the lessee shall pay in addition to the royalty one sixteenth of the profits. *Parton v. Benedum-Treco Oil Co.*, 80 W. Va. 187, 94 S. E. 472.

There is an entirely indefensible decision in *Maione v. Love*, 11 Colo. App. 288, 52 Pac. 1029, holding a non-assessable interest to be one against which no expense is chargeable. It is practically overruled in *Taylor v. Thomas*, 31 Colo. 15, 71 Pac. 381,

where it is made chargeable with its proper proportion of expenses. See notes to the Maloney case as reported in 19 M. R. 310.

The phrase "carried for an eighth interest" is discussed in *Winemiller v. Page* (Okla.) 183 Pac. 501 the Court holding that the opinion of experts was allowable to explain it, but without any clear ruling as to what it did mean.

CHAPTER 33.

OPEN MINES.

Open and Unopened Mines.

At common law a life tenant could work all opened mines but could not open a new mine. *Clavering v. Clavering*, 2 P. Wms. 388, 24 Eng. Reprint 780, 14 M. R. 358. And such has been the general ruling in the United States. *Priddy v. Griffith*, 150 Ill. 562, 41 Am. St. Rep. 397, 37 N. E. 999. And it has been carried so far as to hold that the danger of drainage from other wells is no reason against enjoining the life tenant from opening a well. *Richmond Natural Gas Co. v. Davenport*, 37 Ind. App. 25, 76 N. E. 525.

On the other hand there are two Michigan cases which hold that the common law as to opened and new mines should not be applied to the conditions in this country, to destroy the just claims of dowagers and life tenants. *Seager v. McCabe*, 92 Mich. 186, 16 L.R.A. 247, 52 N. W. 299; *Poole v. Union Trust Co.*, 191 Mich. 162, 157 N. W. 430. And it has been further held that where the sole value of the land is its mineral value, wills and contracts will be construed with reference to that fact. *Wentz's Appeal*, 106 Pa. 301; *Raynolds v. Hanna*, 55 Fed. 783.

Notwithstanding the suggestion in the paragraph last above it is too well settled to be seriously doubted that a life tenant cannot open an entirely new mine where there are no exceptional facts to take the case out of the general rule. *Minner v. Minner* (W. Va.) 100 S. E. 509.

The life tenant may work the coal from an opened mine to exhaustion, but where there is intervening land between two tracts on one of which a mine has been opened the coal on the other tract is not an open mine. *Westmoreland Coal Co.'s Appeal*, 85 Pa. 344.

Public Domain Mines All Open.

There can be no reasonable question that all mining claims, whether lode or placer, located or patented on the public domain under the mining Acts should be considered to be "open" mines, as the discovery and improvements required by law would constitute them such. Mining Rights, 15th Ed. 56.

The interest of a mining locator is equivalent to the fee simple as to all persons except the government. *Buchner v. Malloy*, 100 Pac. 687, 155 Cal. 253; *O'Connell v. Pinnacle G. M. Co.*, 131 Fed. 106, 140 Fed. 854.

M. O. R.—10.

CHAPTER 34.

LACHES. STATUTE OF LIMITATIONS.

The defense of laches is peculiarly applicable to contracts concerning mines including oil and gas. *Gamble v. Hanchett*, 34 Nev. 351, 126 Pac. 111; *Gaines v. Chew*, 167 Fed. 630; *Waterman v. Banks*, 144 U. S. 394, 36 L. ed. 479, 12 Sup. Ct. 646; *Consumers' Gas Trust Co. v. American Plate Glass Co.*, 162 Ind. 393, 68 N. E. 1020. The Statute of Limitations applies to cases at law and laches is its equivalent in equity, the material difference between the two being that the Statute always fixes a definite time while laches has no fixed period. Delay whether long or short amounts, or does not amount to laches, depending on several different factors. Delays and indifference to a plaintiff's rights always weakens his case, but it is not technical laches if the status has not been altered and no harm has come to the defendant by the procrastination. It is also the corollary of the expression, that time is of the essence of the contract.

Laches is not chargeable so long as a party's rights are not invaded. *Morse v. Smyth*, 255 Fed. 981.

Rescission.

The party attempting to rescind a lease and option must act promptly upon discovery of the fraud. *Hazzard v. Johnson* (Cal. App.) 187 Pac. 121.

Courts will not decree rescission of an oil lease assignment, to parties who do not offer to restore what they have received as consideration and fail to give any excuse for want of prompt action after they had knowledge of facts entitling them to rescission. *Duncan v. Keechi O. & G. Co.* (Okla.) 181 Pac. 709.

The lessee is not entitled to rescission on the ground of defective title when he knew of the facts and operated the mine

until he found the results were not satisfactory. *Hazzard v. Johnson* (Cal. App.) 187 Pac. 121.

Excusable Delay.

Where suit is brought within a reasonable time after discovery of the fraud, the defense of laches does not apply. *Beck v. Finley* (Okla.) 187 Pac. 488.

Delay of sixteen months before suit to enforce an oil lease, is not laches where no facts had arisen to make its enforcement inequitable. *Mexico-Wyoming Petroleum Co. v. Valentine*, 237 Fed. 539, 150 C. C. A. 421. And a much longer delay was held excusable on the facts on an accounting. *Stone v. Marshall Oil Co.*, 188 Pa. 602, 41 Atl. 748, 1119, 19 M. R. 593.

Between Locators.

Where the original owner permits a relocater to work for ten years, he is barred by laches. *Harvey v. Laurier M. Co.* (Wash.) 179 Pac. 864.

Statute of Limitations. Trespass Not Known.

In an action to enforce a liability "created by law," the Statute runs from the date of the wrong and not from the date of the discovery of the wrong. *Johnson v. Hinkel*, 29 Cal. App. 78, 154 Pac. 487.

The decisions on the point ruled in the last citation are not uniform. They are collated in *Mining Rights*, 15th ed. at page 480. See also *National Copper Co. v. Minnesota M. Co.*, 57 Mich. 83, 58 Am. Rep. 333, 23 N. W. 781, 17 M. R. 44. It is easily surmisable that the oil under a tract might be drained by wells on adjoining tracts and the fact not be discovered until many years after. However, in such a case, the owner would have no right of action at any time unless he had some privity of estate or contract with the party who took the oil.

When Mineral Title Severed.

Where there has been a severance of the surface and mineral

rights, the possession of one is not hostile to the other. *Kingsley v. Hillside Coal, etc., Co.*, 144 Pa. 613, 23 Atl. 250; *Catlin Coal Co. v. Lloyd*, 176 Ill. 275, 52 N. E. 144; 180 Ill. 398, 72 Am. St. Rep. 216, 54 N. E. 214. And the same is held on a peculiar state of facts in *Delaware Canal Co. v. Hughes*, 183 Pa. 66, 63 Am. St. Rep. 743, 38 L.R.A. 826, 38 Atl. 568.

Mining When Possession.

That secret underground mining is not a hostile possession, that mining itself is proof of possession, but a clandestine entry is not, and that long continued possession ripens into title, see Mining Rights p. 477.

Dietz v. Mission Transfer Co., 3 Cal. Unrep. 354, 25 Pac. 423 is a case where the oil rights had been severed. It suggests without deciding, the effect of surface possession as adverse to the oil which is invisible and even its existence unknown. The oil claimant had entered and built works which were carried away by a flood. He re-entered and begun work at a new place. The Court held that the two entries could not be tied together, as a trespasser has no rights beyond his *pedis possessio*. A rehearing was granted but the case seems not to have been carried further and it rules no other point with any satisfactory clearance.

CHAPTER 35.

STATUTE OF FRAUDS.

The Statute of Frauds is of constant application on leases, agreements for leases and assignments of leasehold interests. The Statute in most states requires leases for more than one year to be in writing, but an oil lease is not always drawn for a definite term of years, long or short.

An oil and gas lease in general terms must be in writing. *Beckett-Iseman Oil Co. v. Backer*, 165 Ky. 818, 178 S. W. 1084; *DeHart v. Enright*, 93 Misc. Rep. 213, 157 N. Y. Supp. 46; *Heller v. Dailey*, 28 Ind. App. 555, 63 N. E. 490.

Conveyance of an interest in the underlying gas is a sale of an interest in land. *Osborn v. Arkansas T. O. & G. Co.*, 103 Ark. 175, 146 S. W. 122.

An oil and gas lease for five years with the paying quantities clause, is a lease for more than five years and under Kentucky Statute must be recorded. *Rader v. Shaffer* (Ky. App.) 218 S. W. 292.

An oil lease for five years is within the Statute of Frauds and is not a mere license; a contract to assign it is also within the Statute. *Priddy v. Green*, 220 S. W. 243 (Tex. Civ.).

A lease granting "all the oil and gas in and under" the land must be in writing and its surrender, the same. *Heller v. Dailey*, 28 Ind. App. 555, 63 N. E. 490.

Assignment or Surrender.

If the law requires the lease to be in writing, its assignment must be in writing. *Kennedy v. Burns* (W. Va.) 101 S. E. 156. Surrender of lease must be in writing unless the surrender be by operation of law. *Heller v. Dailey, supra*.

The terms of a written oil lease for one year may be changed

by parol. *Crawford v. Bellevue, etc., N. Gas. Co.*, 183 Pa. 227, 38 Atl. 595.

Cases Not Within.

A partnership to deal in oil leases is not within the Statute of Frauds. *Bird v. Wilcox*, 104 Kan. 799, 180 Pac. 774. Nor an agreement to pay for drilling a well by giving the driller an interest in the lease. *Haight v. Conners*, 149 Pa. St. 297, 24 Atl. 302.

Simultaneous Records.

Where several papers are offered together for record by different persons (in this instance applications for mineral permits) they are entitled to be filed simultaneously. *Jones v. MacCorquodale* (Tex. Civ. App.) 218 S. W. 59.

CHAPTER 36.

FRAUD.

The physical incidents of oil and gas do not seem to bring up any questions arising out of fraudulent assertions or concealments which are peculiar to these minerals. The general rules of course apply—that fraud is never presumed, that the facts on which it is predicated and not the mere conclusion of fraud must be alleged and that it must be strictly proved.

Plaintiff's failure to read an oil lease, such failure not chargeable to defendant, is no proof of fraud. And the Court cannot rescind for a trifling item of injury. *Texas v. Keeter*, 219 S. W. 521.

The government is bound by the representations of its agents having in charge its negotiation for a forestry contract, so as to predicate charge of fraud or mistake on such representations. "The government will never knowingly do wrong to any of its citizens." *U. S. v. Raine-Andrews Lumber Co.*, 262 Fed. 787.

The Pleading. Spirit Case.

On allegation of fraud the facts must be set out so that the legal conclusions may be drawn from such facts. That defendant had alleged that spirits had informed him that oil existed under the land, on the facts of the case held no ground for relief. *Butler v. Marston*, 145 La. 42, 81 So. 749.

Where it is alleged that stock received had no value, its return or offer to return should be pleaded. *McEntire v. Thomason*, 210 S. W. 563 (Tex. Civ.).

A seven years' mining lease or any modification of the lease must be in writing to comply with the Statute of Frauds. *Last Chance M. Co. v. Tuckahoe M. Co.*, 202 S. W. 287 (Mo. App.).

Evidence. Burden of Proof.

The burden of proof of fraud is on the party alleging it. The allegation of the lessee, an oil speculator that he was a profligate sale of an oil lease by the corporation, the stockholders may sue. *Bentley v. Zelma Oil Co.* (Okla.) 184 Pac. 131.

ducer of oil, is not a material allegation. *Gillespie v. Fulton Oil & G. Co.*, 236 Ill. 188, 86 N. E. 219. The burden of proof is on the government even on its negative averments in suit to set aside patent and the government is subject to the same rule which governs individuals, and the evidence must be clear and convincing. *United States v. Safe Inv. Gold Min. Co.*, 258 Fed. 872.

Evidence to establish must exceed a preponderance. *In re Georgia Steel Co.*, 240 Fed. 473, 474; *United States v. California Midway Oil Co.*, 259 Fed. 343.

Knowledge of Facts

sufficient to put a prudent man upon inquiry, is constructive notice of the fact itself. *Brink v. Canfield* (Okla.) 187 Pac. 223.

Opinions as to Value,

as a rule are not actionable, but where fortified by any artifice they become so. A secret commission to one of the purchasers avoids the contract. *Beck v. Finley* (Okla.) 187 Pac. 488.

Concealment of Strike.

Representing contrary to the fact a well actually producing was a dry hole, is actionable fraud. *Van Winkle v. Hinkle* (Okla.) 186 Pac. 942. *Zundelowitz v. Waggoner* (Tex. Civ. App.) 211 S. W. 598. The same as to concealment of an oil strike, but resultant injury, as well as the fraud must be proved. *Arnold v. Producers Oil Co.* (Tex. Civ. App.) 196 S. W. 735. Subsequent discovery of oil cannot be considered on the question of value of the land on the issue of inadequate consideration at the time the sale was made. *Butler v. Martson*, 145 La. 42, 81 So. 749.

Corporation Cases.

Stockholders selling oil by virtue of corporate control wrongfully obtained, become voluntary trustees for the other stockholders and are chargeable with the market price of the oil when sold. *Fredenhall v. Schrader*, 188 Pac. 580 (Cal.)

A party cannot accept a grant from a corporation after he

had placed himself in such position that his demands on such corporation belong in equity to his assignee. *Priddy v. Green*, 220 S. W. 243 (Tex. Civ.).

Contract by Convict.

A party purchasing an oil lease from an Indian convict was held chargeable with whatever facts he could have learned upon reasonable inquiry and among others of what the records of the Indian office would have disclosed. Such lease will not be set aside where there was no imposition and the consideration not inadequate as the land was known at the time. That the convict was ignorant of the oil conditions, was one of the allegations. On the facts one of the leases was set aside, but otherwise as to another lease in the hands of a bona fide purchaser. *Moore v. Sawyer*, 167 Fed. 826.

Sale by Sample.

A party contracting for lubricating oil worth over \$1.25 per gallon was shown a sample of crude oil worth 16 cents a gallon as a sample of what he was buying, and so agreed to take the oil according to "sample." It was held to be a fraud of no avail to the defendant. *Maute v. Gross*, 56 Pa. 250, 94 Am. Dec. 62, 11 M. R. 123.

Inadequacy of Consideration

in connection with dealing with an illiterate Indian addicted to drink, is sufficient to set aside the lease. *Brink v. Canfield* (Okla.) 187 Pac. 223.

Promise to Be Performed.

The allegation that lessee represented that he would begin to operate in a reasonable time, is not material on a bill to cancel the lease, it being in contradiction to the terms of the lease and not omitted therefrom by fraud or mistake. *Jackson v. Pure Oil Co.* (Tex. Civ. App.) 217 S. W. 959.

A promise made with the intention not to perform is fraud. But the mere failure to perform is not proof of the nonintention to perform. *Long v. Calloway*, 220 S. W. 414 (Tex. Civ.).

Suit by Stockholders.

Where the directors refuse to bring suit to set aside a fraudulent sale of an oil lease by the corporation, the stockholders may sue. *Bentley v. Zelma Oil Co.* (Okla.) 184 Pac. 131.

No Relation Back.

As an agent had made in good faith certain oil locations his subsequent wrong conduct, in the nature of fraud, favoring other locators, does not relate back to invalidate the original locations. *United States v. California Midway Oil Co.*, 259 Fed. 343.

Bona Fide Purchaser.

The defense of bona fide purchaser is on the defendant and must be pleaded and proved. *United States v. Poland*, 251 U. S. 221, 64 L. ed. —, 40 Sup. Ct. Rep. 127 (163)

A mining company is not an innocent purchaser when all its principal officers have full knowledge of the rights of third persons. *Walla Walla Oil, etc., Co. v. Vallentine*, 103 Wash. 359, 174 Pac. 980.

The grantor in an oil and gas lease as against an innocent bona fide purchaser, is estopped to deny receipt of the \$1 consideration. *Dill v. Frazee*, 169 Ind. 53, 79 N. E. 971.

The plea of bona fide purchaser in suits to set aside patents is considered in *United States v. Grand Canyon Cattle Co.*, 247 Fed. 446, 159 C. C. A. 500, holding that it is an affirmative defense. It was sustained on the facts and the Court took judicial cognizance of the fact that the abandonment of mining is no proof that the claims were not originally taken up in good faith.

A purchaser in good faith is not responsible against an outstanding grub stake contract. *Kimball v. Superior Court*, 38 Cal. App. 761, 177 Pac. 488.

Election of Remedies.

Instead of suing for rescission, the buyer in action based on fraud may recover the amount of his payments. *Withroder v. Elmore* (Kan.) 187 Pac. 863.

Waiver.

Accepting a new contract on better terms waives the right to rescind the original contract. *New Martinsville Oil Co. v. Barnett Oil, etc., Co.*, 261 Fed. 34. Reversing *Barnett Oil, etc., Co. v. Martinsville Oil Co.*, 254 Fed. 481.

The prospective production of oil by the lessee cannot be taxed. The oil in place is taxable only to the owner. *Carter v. Tyler County Court*, 45 W. Va. 806, 43 L.R.A. 725, 32 S. E. 216.

CHAPTER 37.

TAXATION.

The taxation of mines or mining value or mine proceeds has led to many distinctions, some of them obvious and others to the writer very forced.

In the first place the extraction of mineral leads to a paradoxical proposition. The taking of every ton of ore or ton of coal, or barrel of oil, of course, reduces the mineral contents of the land producing it just so much. On the other hand if none is taken, there is perhaps no proof at all that the land has any mineral value. The mineral content and the value are not the same. If an outcrop giving good assays is found the discovery shows a prospect of little or no salable value. If the finder sinks a shaft which more than pays its cost, he has taken so much of its total contents but has shown the capacity of the outcrop to become a producer and so has increased its value.

It is theoretically possible that oil, coal or some other mineral may underlie any acre of land on earth. This theoretical possibility does not render land taxable for its mineral values, but where the mineral value is known it comes under the taxing power not always by separate assessment but by increasing the market value of the land.

Prospective Value.

When coal is reserved but is not known to exist, it should be taxed at only a nominal sum. *In re Colby* (Iowa) 169 N. W. 443. The mere prospective mineral value of land was held not taxable in *Camp Phosphate Co. v. Allen* (Fla.) 81 So. 503, and to the contrary in *Washington Coal etc., Co. v. Thurston County* (Wash.) 177 Pac. 774.

The right of the case seems to be with the above Camp Phosphate decision holding prospective value, nontaxable. The ruling that it should be taxed at a nominal value, is a compromise or evasion of the point. A tax sale on a nominal valuation might result in the loss of the mineral rights the same as if they had been taxed at a high valuation as tangible property.

Separate Ownership.

When separately owned the surface and the mineral value may be separately assessed. *Consolidated Coal Co. v. Baker*, 135 Ill. 545, 12 L.R.A. 247, 26 N. E. 651; *Downman v. Texas*, 231 U. S. 353, 58 L. ed. 264, 34 Sup. Ct. 62.

An oil lease is taxable separate from the fee in the owner. *Raydure v. Board of Supervisors*, 183 Ky. 84, 209 S. W. 19; *Texas Corp. v. Dougherty*, 107 Tex. 226, 176 S. W. 717. But see *Carter v. Tyler County Court*, 45 W. Va. 806, 43 L.R.A. 725, 32 S. E. 216.

Oil and gas covered by a lease is not separately taxable. *Kansas Natural Gas Co. v. Board of Com'rs of Neosho County*, 75 Kan. 353, 89 Pac. 750.

An oil lease—that is to say the mineral interest in the land may be separately taxed under the California statute. *Graciosa Oil Co. v. Santa Barbara County*, 155 Cal. 140, 20 L.R.A. (N.S.) 211, 99 Pac. 483.

Possessory Title.

The possessory title to a mining claim is taxable. *Forbes v. Gracey*, 94 U. S. 762, 24 L. ed. 313, 14 N. E. 183; *Elder v. Wood*, 208 U. S. 226, 52 L. ed. 464, 28 Sup. Ct. 263; *Seymour v. Fisher*, 16 Colo. 188, 27 Pac. 240. But in the mining sections they are not generally returned or assessed unless the improvements are extensive.

Reservation.

Minerals reserved by deed are taxable. *Northwestern Imp. Co. v. Oliver County*, 38 N. D. 57, 164 N. W. 315.

Assessment.

The items which go to prove taxable value of a coal mine are fully considered in *In re State Line, etc., R. Co's Taxation* (Pa.) 107 Atl. 860. The mineral is to be added to the agricultural value. *Palmer Co. v. Police Jury*, 142 La. 1076, 78 So. 122.

Unconscionable Assessment.

The American Bauxite Co. paid \$500,000 for Bauxite lands in Arkansas. The assessor listed the property at \$47,000,000. The report does not give the theory on which this assessment was made but there was no attempt to defend it. The Board of Equalization cut it down to \$2,500,000. The County Court reduced it to \$623,000. The Supreme Court held that the market value should have been the basis of assessment, enumerates the items on which market value may be based and ruled that market value meant what the lands could have been sold for. *American Bauxite Co. v. Board of Equalization*, 119 Ark. 362, 177 S. W. 1151.

In *Martineau v. Clear Creek O. & G. Co.* (Ark.) 217 S. W. 806, an excessive valuation was set aside, the Court enumerating the items which should be considered, including the probable producing life of the wells and the cost of development.

Gross Proceeds.

A tax on the gross proceeds of sale of oil, was upheld in *State v. Standard Oil Co.*, 61 Or. 438, Ann. Cas. 1914B 179, 123 Pac. 40.

The oil production tax is constitutional and is in addition to the tax on the property. *Raydure v. Board of Supervisors*, 183 Ky. 84, 209 S. W. 19.

Net Proceeds.

Almost every mining state has attempted to tax the net proceeds of mines. Plausible as the idea is, it is really only an attempt to enforce double taxation. But the Acts to this effect

have nevertheless been generally upheld. *Montana Coal & C. Co. v. Livingston*, 21 Mont. 59, 52 Pac. 780; *Tallon v. Vindicator, Consol. Gold Min. Co.*, 59 Colo. 316, 149 Pac. 108.

The net proceeds tax of Idaho, basing the valuation on the net production of the preceding year was upheld in *Hanley v. Federal Min., etc., Co.*, 235 Fed. 769.

License and Inspection Taxes.

In Louisiana a license tax on the operator based on the oil production was upheld. This of course means double taxation but was defended on special clauses of the State Constitution. *Standard Oil Co. v. Police Jury*, 140 La. 42, 72 So. 802. Same holding in a sulphur case. *Union Sulphur Co. v. Reed*, 249 Fed. 172. An inspection tax of ten cents per barrel of oil, producing revenue largely in excess of cost of production is void. *State v. Standard Oil Co.*, 100 Neb. 826, L.R.A.1917D 746, 161 N. W. 537.

A License Tax of three per cent on the gross receipts of natural gas and other gas companies, was held void in *City of Portland v. Portland Gas, etc., Co.*, 80 Or. 271, 156 Pac. 1070, overruling 150 Pac. 273.

A tax of \$10 on all oil storage stations where oil was kept in bulk or in tanks were held void as a property tax but valid as a police regulation. *Standard Oil Co. v. Commonwealth*, 119 Ky. 75, 82 S. W. 1020.

License taxes on oil distributors may classify the persons subject to them and levy different rates according to the classifications. *Standard Oil Co. v. Fredericksburg*, 105 Va. 82, 52 S. E. 817. But this discrimination must be reasonable and taxing different companies on the basis of their modes of transmission cannot be sustained. *City of Lincoln v. Lincoln Gas, etc., Co.*, 100 Neb. 182, 158 N. W. 962; *Lincoln Gas & Electric Light Co. v. Lincoln*, 182 Fed. 926. An exemption in favor of small gas wells was upheld in *Los Angeles Gas, etc., Corp. v. Los Angeles*, 163 Cal. 621, 126 Pac. 594.

The License Mining Tax Act of Alaska Upheld. *Alaska Mexican Gold Mining Co. v. Alaska*, 236 Fed. 64, 149 C. C. A. 274.

A tag tax of one-half cent on each gallon of oil, producing a revenue many times in excess of the cost of inspection is void, because interference with interstate commerce and also in violation of the State Constitution. Where the penalty would come on every shipment the remedy at law is out of the question and equity will relieve by injunction. The Court considered the suggestion that if the tax was excessive the legislature would be expected to amend the Statute (which is a practical denial of all relief) and refused to accept or act on it. *Wafford Oil Co. v. Smith*, 263 Fed. 396.

The License Tax Act of New Mexico, Session Laws of 1919, p. 182, so far as it taxes sales of gasoline in original packages is void because an interference with interstate commerce. As to sales from broken containers it is valid. *Askren v. Continental Oil Co.*, 40 Sup. Ct. Rep. 355.

The tax known as the Kennedy Act of Texas of 1905 on oil dealers upheld. *Southwestern Oil Co. v. Texas*, 217 U. S. 114.

Income Tax.

A nonresident may be taxed in Oklahoma on his income from oil wells in that State. *Shaffer v. Howard*, 250 Fed. 873. Distribution of accumulated earnings held not to be income under Act of Oct 3, 1913. *Gulf Oil Corp. v. Lewellyn*, 242 Fed. 709.

Construction of A. C. Aug. 5, 1919, Corporation Tax Act. Claimed reductions for exhaustion disallowed. *United States v. Biwabik Mining Co.*, 247 U. S. 116, 62 L. ed. 1017, 38 Sup. Ct. 462; *Goldfield Consol. Mines Co. v. Scott*, 247 U. S. 126, 62 L. ed. 1022, 38 Sup. Ct. 465.

Depletion of mine by removal of ore is not a depletion of property for which deductions may be made. *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503, 61 L. ed. 460, 37 Sup. Ct. 201.

A stock dividend (Standard Oil Company stock) is not income, nor are the accumulated profits behind it, income. And the Revenue Act of 1916, in its imposition of such tax is in violation of the Constitution, notwithstanding the 16th amendment. *Eisner v. Macomber*, 40 Sup. Ct. Rep. 189.

The commissioner refusing to make allowances for depreciation of value of equipment, the excess tax paid under Excess

Act of Aug. 5, 1909, sec. 38 (36 St. L. 112) was recovered by the plaintiff. *Camp Bird, Lim. v. Howbert*, 262 Fed. 114.

Nonresidents.

Enforcement of the Arizona Act attempting to tax the intangible property of foreign corporations was enjoined in *Standard Oil Co. v. Howe*, 257 Fed. 481, 483.

The Oklahoma income tax upon the oil proceeds of nonresidents, received from Oklahoma wells upheld, altho, the gross production tax on the same proceeds may amount to double taxation. *Shaffer v. Carter*, 40 Sup. Ct. Rep. 221.

An oil and gas lease on land in another State is not subject to inheritance tax on the decease of the lessee. *Dewitt's Estate, in re*, 109 Atl. 699 (Pa.)

A Perpetual Lease.

A perpetual lease to take out all the coal is a sale of the coal and makes the lessee or vendee the party liable for the taxes. *Delaware, etc., R. R. Co. v. Sanderson*, 109 Pa. 583, 58 Am. Rep. 743, 1 Atl. 394.

Interstate Commerce.

Crude oil in transit from state to state is under Interstate Commerce and not taxable. *Prairie Oil & G. Co. v. Ehrhardt*, 244 Ill. 634, 91 N. E. 680. See *State v. Flannelly*, 96 Kan. 372, 152 Pac. 22. But a New Jersey case held that a pipe line company carrying oil from Pennsylvania to New Jersey is not exempt on the plea of doing Interstate Commerce business. *Tide Water Pipe Co. v. State Board*, 57 N. J. L. 516, 27 L.R.A. 684, 31 Atl. 220.

CHAPTER 38.

POLICE POWER. CITY ORDINANCES.

Municipal interference and the exercise of the police power confront the oil operator on every side. In *Pierce Oil Corp. v. City of Hope*, 248 U. S. 498, 63 L. ed. 210, 139 Sup. Ct. 172, the ordinance of a small town forbidding storage of oil within 300 feet of any dwelling was upheld under extremely severe conditions. It would be hard to find a spot in any city, town or village more than 300 feet distant from any dwelling. But in *Smith case*, 143 Cal. 368, 77 Pac. 180, an ordinance forbidding the maintenance of gas works in a sparsely settled district was held void.

The quantity of gasoline storage may be regulated by ordinance. *Texas Co. v. Fisk* (Tex. Civ. App.) 129 S. W. 188. An enlargement of a filling station is not a new erection. *State v. Dauben* (Ohio) 124 N. E. 232.

The distribution of natural gas for light, heat and power is a business of a public nature under the control of the State. *City of La Harpe v. Elm Tp. Co.*, 69 Kan. 97, 76 Pac. 448.

A street railway company may be assessed for part of the cost of oil sprinkling. *Henderson Traction Co. v. City of Henderson*, 178 Ky. 124, 198 S. W. 730.

Public Utilities. Gas Rates.

Gas rates may be fixed by ordinance or legislation but must not be so unreasonable as to amount to confiscation. *City of Knoxville v. Knoxville Water Co.*, 212 U. S. 1, 53 L. ed. 371, 29 Sup. Ct. 148; *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, 53 L. ed. 382, 29 Sup. Ct. 192, 15 Ann. Cas. 1034, 48 L.R.A.(N.S.) 1134; *Lincoln Gas, etc., Co. v. Lincoln*, 223 U. S. 349, 56 L. ed. 466, 32 Sup. Ct. Rep. 271; *Public Service Com. v. Brooklyn B. Gas Co.*, 189 App. Div. 62, 178 N. Y. Supp. 93. A difference of

rate to different classes of consumers was upheld in the *Willcox* case. And the Court will not finally act on the allegation of confiscatory rates until time has proved the practical results of the ordinance. *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153. *State Pub. Utilities Comm. v. Springfield Gas & E. Co.* (Ill.) 125 N. E. 891, is a late case reviewing the whole subject of regulation of compensation.

It is intimated that the falling off in the supply of natural gas, may be considered by the Public Utilities Commission. *Public Service Commission v. Iroquois N. Gas Co.* (App. Div.) 179 N. Y. Supp. 230. Both danger of exhaustion of supply and expenditures on pipe line were passed on in *Clarksburg Co. v. Public Service Comm.* (W. Va.) 100 S. E. 551.

Rates for sale of natural gas fixed by the Public Utilities Commission held confiscatory because the commission had failed to allow for the diminishing supply. *Landon v. Public Utilities Commission*, 234 Fed. 152.

The State cannot impose commercially impossible conditions upon a gas company nor impose unconscionable penalties. *Consolidated Gas Co. v. City of New York*, 157 Fed. 849. See *Knoxville Gas Co. v. Knoxville*, 261 Fed. 283. And the Courts will give relief against confiscation rates. *City of Pueblo v. Public Utilities Comm.* (Colo.) 187 Pac. 1026. But in *Muscatine Lighting Co. v. City of Muscatine*, 256 Fed. 929, the Court goes so far as to hold that if by change of conditions the rates have become confiscatory, the Courts can afford no relief. To same effect is *Bronx Gas Co. v. Public Service Comm.*, 212 N. Y. Supp. 172, 218. See *Knoxville Gas Co. v. Knoxville*, 261 Fed. 283.

CHAPTER 39.

INSPECTION.

Mine Inspection.

The right of inspection, including survey, of any sort of mine in litigation under supervision of the Court, has been so frequently decided as to be beyond question. The authorities may be found in the Mining Rights 15th ed. p. 473.

The Court may order the inspection of gas wells in controversy before it. *Culbertson v. Iola P. Cement Co.*, 87 Kan. 529, 125 Pac. 81.

Oil Inspection.

The inspection of oil on the market for any commercial purpose, is exercised under the police power. Fees for such inspection are only legal when limited to the cost of the service and they cannot rightfully be made a source of revenue which would be equivalent to a special tax. But the constant tendency of legislation is to make this cost so large as to amount to a source of revenue and under the Red C. decision below cited from 222 U. S.; such covert attempt is practically without judicial remedy.

Inspection fees intended for revenue, on oil imported into the State, are excessive and unconstitutional. *Standard Oil Co. v. Graves*, 249 U. S. 389, 63 L. ed. 412, 39 Sup. Ct. 320, Reversing *Standard Oil Co. v. Graves*, 94 Wash. 291, 162 Pac. 558 and Distinguishing *General Oil Co. v. Crain*, 209 U. S. 211, 52 L. ed. 754, 28 Sup. Ct. 475.

Oil inspector fees may be lawfully imposed by the State. It is not a Tax but a charge for services rendered. *Louisiana State Board of Health v. Standard Oil Co.*, 107 La. 713, 31 So. 1015.

Oil inspected and adjudged below standard may be mixed with other oil to bring it up to the standard. *Commonwealth v.*

Standard Oil Co., 129 Ky. 546, 112 S. W. 632. And oil inspected in another State may be exempted from the Statute. *Robinson, In re*, 28 Tex. App. 511, 13 S. W. 786.

Altho oil has been inspected and passed, if the dealer receives information that it is defective, he is required to take further precautions. *Chapman v. Pfarr*, 145 Iowa 196, 123 N. W. 992.

Gasoline is subject to the inspection Act under the general description of a "fluid that can be used for illuminating purposes." *Burkhardt's Adm'r v. Striger* (Ky.) 67 S. W. 270.

The oil inspection Acts of the States generally are reviewed in *Red "C" Oil Mfg. Co. v. Board of Agriculture*, the Court refusing to inquire whether the inspection fees amounted to revenue and ruling that a party complaining of the Regulations of the State Board must apply for relief to that board. 222 U. S. 380, 56 L. ed. 240, 32 Sup. Ct. 152.

Letters patent of the United States do not protect a burning fluid from the State Inspection. *Patterson v. Kentucky*, 97 U. S. 501, 24 L. ed. 1115.

CHAPTER 40.

PIPE LINES.

"The only practical method of transporting natural gas is by a pipe line." *Haskell v. Cowham*, 187 Fed. 403, 109 C. C. A. 235.

This adjunct to the production of natural gas and almost to the same extent of oil came into use as soon as oil and gas became commercial products on a large scale. The methods of carriage by flat boats and cartage in barrels were both costly and wasteful. Pipe Line Companies are recognized everywhere as common carriers and as ways of necessity.

Across Public Domain.

The right to construct them over the public domain was granted by several Acts of Congress. (See 41 L. D. 138 and 43 L. D. 110.) And they are covered again by Sec. 28 of the Oil Leasing Act of 1920.

Common Carriers.

A pipe line company is a common carrier, *Prairie Oil & Gas Co. v. United States*, 204 Fed. 798 and may exercise the right of eminent domain. *Consumers Gas Trust Co. v. Harless*, 131 Ind. 446, 15 L.R.A. 505, 129 N. E. 1062; *Carothers v. Philadelphia Co.*, 118 Pa. 468, 12 Atl. 314; *Johnston's Appeal* (Pa.) 7 Atl. 167, 15 M. R. 556; *Carnegie Natural Gas Co. v. Swiger*, 72 W. Va. 557, 46 L.R.A.(N.S.) 1073, 79 S. E. 3; *Bloomfield, etc., Light Co. v. Richardson*, 63 Barb. (N. Y.) 437.

A pipe line devoted to the public transportation of oil is a common carrier, and it cannot by contract for future transportation, or pledge, prevent its regulation by the State as a public utility. *Producers Transp. Co. v. Railroad Commission*, 251 U. S. 228, 64 L. ed. 166, 40 Sup. Ct. 130.

A pipe line is an "internal improvement" under the West Virginia Corporation Acts. *West Virginia Transp. Co. v. Volcanic Oil & C. Co.*, 5 W. Va. 382.

The State cannot arbitrarily declare a private pipe line to be a common carrier. But where such a company begins to serve the public generally it comes under the Public Utilities Law. *Producers Tr. Co. v. R. R. Comm.*, 40 Sup. Ct. Rep. 131.

Condemnation.

The measure of damages on condemnation of a pipe line is stated in *McGregor v. Equitable Gas Co.*, 139 Pa. 230, 21 Atl. 13, and the evidence, in *Davis v. Jefferson Gas Co.*, 147 Pa. 130, 23 Atl. 218, and *Wallace v. Jefferson Gas Co.*, 147 Pa. 205, 23 Atl. 416.

The State may authorize the condemnation of the right of way for a pipe line under the streets of a city. *City of La Harpe v. Elm T. Gas Co.*, 76 Pac. 448, 69 Kan. 97.

The measure of damage for pipe line across railroad is the fair market value of the land. *Calor Oil and Gas Co. v. Franzell*, 128 Ky. 715, 33 Ky. L. R. 98, 109 S. W. 328, 122 S. W. 188.

The question of the public need in a case of eminent domain is generally one for the Court and not for the jury. *Carnegie Natural Gas Co. v. Swiger*, 72 W. Va. 557, 46 L.R.A. (N.S.) 1073, 79 S. E. 3.

The line of the pipe cannot be changed to cover new ground without further condemnation. *Lowe v. Pure Oil Co.*, 260 Fed. 704.

Incidents. Interstate Commerce.

The pipe line has the right to support from the underlying coal beds. *Davis v. Jefferson Gas Co.*, 147 Pa. 130, 23 Atl. 218; *Penn. Gas Coal Co. v. Versailles Fuel Gas Co.*, 131 Pa. 522, 19 Atl. 933. And is real estate and taxable as such. *State v. Berry*, 52 N. J. L. 308, 19 Atl. 665. And when it carries from State to State it comes under the Interstate Commerce provision of the constitution. *Landon v. Public Utilities Comm.* 234 Fed. 152.

The transportation of natural gas from State to State is

interstate commerce, but its rates of sale may be regulated by State law. *Pa. Gas Co. v. Public Service Commission*, 40 Sup. Ct. 279.

Where gas was found on a tract bisected by a right of way the owner has a way of necessity to pipe his gas under the railroad. *Uhl v. Ohio River R. Co.*, 34 S. E. 934, 47 W. Va. 59.

Right to Abandon.

It has a right to abandon the easement and remove its pipe line, but must fill up the trench and is liable for any injury to crops by the Act of removal. *Clements v. Philadelphia Co.*, 184 Pa. 28, 39 L.R.A. 532, 38 Atl. 1090.

Where the oil lessee was granted the right to construct a pipe line, such right was construed to be limited to the benefit of the demised well and was not exclusive of the right to allow others to be licensed to pipe line across the tract. *Brookshire Oil Co. v. Casmalia Ranch, etc., Co.* 156 Cal. 211, 103 Pac. 927.

Limiting Pressure.

The State has power to regulate and limit the pressure to be used in transmitting natural gas. The Act was upheld, Owens J., dissenting. *Jamieson v. Indiana N. Gas, etc., Co.*, 128 Ind. 555, 12 L.R.A. 652, 28 N. E. 76. This case is very full on the incidents peculiar to natural gas.

In *Addleman v. Manufacturers' Light, etc., Co.*, 242 Pa. 587, 89 Atl. 674, 255 Pa. 580, 100 Atl. 444, the relation of the diameter of the tubing to the pressure is considered.

Negligence.

Natural gas companies are held to great care to maintain safe pipes and to keep them inspected and are liable in damages for explosion of escaping gas. *Hashman v. Wyandotte Gas Co.*, 83 Kan. 328, 111 Pac. 468. And for allowing the contents to escape, percolate and destroy springs. *Hauck v. Tidewater P. L. Co.*, 153 Pa. 366, 26 Atl. 644, 34 Am. St. Rep. 110, 20 L.R.A. 642.

The company was held for the consequences of a break by a

third party for neglect to discover it in time. *Lee v. Vacuum Oil Co.*, 54 Hun, 156, 7 N. Y. Supp. 426.

When Not Liable.

The pipe line is not the proximate cause of an accident where the oil in it burst by an overflow of foreign oil. *Behling v. South West Pennsylvania Pipe Lines*, 160 Pa. 359, 40 Am. St. Rep. 724, 28 Atl. 777. Nor where a steam shovel struck a buried pipe line and was damaged by a resulting fire. *Clement v. United States Pipe Line Co.*, 253 Pa. 187, 97 Atl. 1070.

Delivery to Pipe Line.

Where one of several parties interested had delivered oil to a pipe line it was held that the delivery was prima facie valid and plaintiff's only remedy was upon an accounting with his cotenants or at most the recovery of the value of his fractional interest. *Enterprise Oil & Gas Co. v. National Transit Co.*, 172 Pa. 421, 51 Am. St. Rep. 746, 33 Atl. 687, 18 M. R. 312. And see *Gillette v. Mitchell* (Tex. Civ. App.) 214 S. W. 619.

CHAPTER 41.

INTERSTATE COMMERCE. TRANSPORTATION.

Interstate Commerce.

Transportation of oil or gas from state to state is Interstate Commerce, but the police power remains to the state. *Pennsylvania Gas Co. v. Public Service Commission*, 122 N. E. 260, 225 N. Y. 397. And it does not lose its interstate character by being mingled with local gas. *Landon v. Public Utilities Commission*, 234 Fed. 152. And the State may regulate the rates of transportation. *Tucker v. Missouri Pac. R. Co.*, 82 Kan. 222, 108 Pac. 89.

The State has no power to fix the price of natural gas carried from one State to another, nor to prohibit its transportation from state to state. *In re Pennsylvania Gas Co.*, 103 Misc. Rep. 37, 169 N. Y. Supp. 820. *State v. Indiana, etc., Min. Co.*, 120 Ind. 575, 6 L.R.A. 579, 22 N. E. 778; *Manufacturers Gas, etc., Co., v. Indiana, etc., Oil. Co.*, 155 Ind. 545, 53 L.R.A. 134, 58 N. E. 706, 21 M. R. 102; *West v. Kansas N. Gas Co.*, 221 U. S. 229, 55 L. ed. 716, 31 Sup. Ct. 564, 35 L.R.A.(N.S.) 1193 (Affirming *Kansas Natural Gas Co. v. Haskell*, 172 Fed. 545); *Haskell v. Kansas N. Gas Co.*, 224 U. S. 217, 56 L. ed. 738, 32 Sup. Ct. 442; *Haskell v. Cowham*, 187 Fed. 403, 109 C. C. A. 235.

Natural gas, carried in pipes, is as much a commercial commodity as coal in the cars or petroleum in tanks. *State v. Indiana, etc., Min. Co.*, 120 Ind. 575, 6 L.R.A. 579, 22 N. E. 778; *Kansas N. G. Co. v. Haskell, supra*; *Affd., West v. Kansas N. Gas Co., supra*.

Common Carrier.

Certain pipe line companies construed to be not common carriers. The Act of 1913, regulating pipe line companies con-

sidered. *Associated Pipe Line Co. v. Railroad Commission*, 176 Cal. 518, 169 Pac. 62, L.R.A.1918C 849; *Producers Transp. Co., v. Railroad Commission*, 176 Cal. 499, 169 Pac. 59.

A contract to allow a single common carrier the right of way exclusive of such rights of way as others might seek to acquire, is void. *West Virginia Transp. Co. v. Ohio River Pipe Line Co.*, 22 W. Va. 600, 46 Am. Rep. 527.

The carrier is liable for oil lost in shipment unless the loss was chargeable to the Act of God or other like cause. *Coad v. Pennsylvania Ry.* (Iowa) 175 N. W. 344.

Tank Cars.

The Railroad is not bound to furnish tank cars to carry oil. They are furnished by the shipper. Good reason for this is clearly stated in *Chicago R. I. & P. Ry. Co. v. Lawton Refining Co.*, 253 Fed. 705.

CHAPTER 42.

NEGLIGENCE. EXPLOSIONS AND OTHER ACCIDENTS.

The inflammable and explosive qualities of gas and oil and their products have led to many suits based on accidents where the general law of negligence applies. Judicial notices as elsewhere stated is taken of these incidents and not only has strict care been required in the use and handling, but responsibility for the results of this dangerous character has been held to continue even after the product of the well has ceased to be either oil or gas or their immediate derivatives.

The explosive nature of gasoline is well considered and the conditions stated where danger lies, in *O'Brecht v. Cedar Rapids Co.* (Iowa) 170 N. W. 785. But there being little or no proof of defendant's negligence, it was held not liable.

Flowage from Wells.

The defendant was held not liable for allowing oil and salt water to flow down a natural stream to the injury of a lower proprietor if he was free from negligence in the operation of this well. *Ohio Oil Co. v. Westfall*, 43 Ind. App. 661, 88 N. E. 354.

The same point was considered in *Pfeiffer v. Brown*, 165 Pa. 267, with the outcome that the well operator was liable if he could have avoided the damages by reasonable care and some expenditure, the Court appealing to the doctrine of comparative loss and gain, which has the form of fairness but as it says brings the parties into a "debatable region." The opinion cites *Collins v. Chartiers Gas Co.*, 131 Pa. 143.

Selling One Thing for Another May Create a Liability.

The defendant was held for consequences when it had sold gasoline as coal oil or kerosene. *Harlow v. Propes*, 102 Kan. 424,

170 Pac. 983; *Kearse v. Seyb*, 200 Mo. App. 645, 209 S. W. 635. In the latter case the remote vendor was held in damages to the ultimate purchaser. It is the duty of the company to attend to the service pipes and it is liable for explosion resulting from neglect. *Hahn v. Southwestern Gas Co.* 145 La. —, 82 So. 199.

When oil bought as "coal oil" was in fact a dangerous compound of coal oil and gasoline the original vendor was held for the ultimate consequences. *Waters Pierce Oil Co. v. Deselms*, 212 U. S. 159, 53 L. ed. 453, 29 Sup. Ct. 270.

The vendor is liable for result of selling gasoline as kerosene. *McLawson v. Paragon Ref. Co.*, 198 Mich. 222, 164 N. W. 668.

Storage Cases. Vapor.

The storage of large quantities of gasoline requires care commensurate with the apparent dangers from such storage. *Woods v. Chalmers Motor Co.* (Mich.) 175 N. W. 449.

Naphtha vapor, arising from soap, during marine shipment is explosive and the ship is bound to see it stored where it will have necessary ventilation. *International Mercantile Marine Co. v. Fels*, 164 Fed. 337. See on similar points. *Standard Oil Co. v. Tierney*, 92 Ky. 367, 36 Am. St. Rep. 595, 14 L.R.A. 677, 17 S. W. 1025.

It is common knowledge that crude oil and gasoline will emit gas. *Gulf C. & S. F. Railway Co. v. Clement*, 220 S. W. 407 (Tex. Civ.)

Leaks, Floating Oil.

The company is liable for a leak in the pipes which allowed the gas to escape, explode and wreck a building. *Alexandria Mining, etc., Co. v. Irish*, 16 Ind. App. 534, 44 N. E. 680. In *Texas & N. O. R. Co. v. Bellar*, 51 Tex. Civ. App. 154, 112 S. W. 323, the railroad was held liable for fire caused by fuel allowed to escape from its tanks. Allowing oil to escape into a stream where it catches fire creates a liability for the results. *Northup v. Eakes* (Okla.) 178 Pac. 266. And where several oil wells negligently allowed crude oil to flow into a creek which caught fire

and burned a barn they are jointly and severally liable. *Northup v. Eakes* (Okla.) 178 Pac. 266.

Seepage.

For injury to a well from a gas plant defendant is liable and want of negligence is no defense. *Belvidere Gaslight & Fuel Co. v. Jackson*, 81 Ill. App. 424.

Below Standard.

Defendant held for accident arising from explosion of oil due to its inferior quality. *Schmidt v. Union Oil Co.*, 27 Cal. App. 366, 149 Pac. 1014.

Oil in Transit.

The railroad is bound to great care in the carriage of dangerous freight such as tank cars or oil in barrels. *Lake Erie, etc., R. Co. v. Lowder*, 7 Ind. App. 537, 34 N. E. 447, 747; *Empire Transp. Co. v. Wamsutta Oil, etc., Co.*, 63 Pa. 14, 3 Am. Rep. 515.

In *Oil Creek & A. R. Ry. Co. v. Keighron*, 74 Pa. 316, the railroad was held liable for letting an oil car run loose on a down grade. And for accident from negligent care of its gas tanks. *Chicago, R. I. & T. Ry. Co. v. Rhodes*, 35 Tex. Civ. App. 432, 80 S. W. 869. But not for defective valve in tank car, where there was an intervening cause of the accident. *Goodlander Mill Co. v. Standard Oil Co.*, 63 Fed. 400, 11 C. C. A. 253, 27 L.R.A. 583.

A railroad company placing an inexperienced man in charge of a gasoline engine is liable for resulting accident. *Erie R. Co. v. Collins*, 259 Fed. 172.

The shipper of oil is not liable for fire caused by leak from the car where the shipper was only remotely connected with the accident. *Goodlander Mill Co. v. Standard Oil Co.*, 63 Fed. 400, 11 C. C. A. 253, 27 L.R.A. 583. Nor is a defendant liable where his oil was fired by a third person. *Behling v. Southwest Pennsylvania Pipe Lines*, 160 Pa. 359, 40 Am. St. Rep. 724, 28 Atl. 777.

The transportation company was held not responsible for ex-

plosion of a gasoline tank mislabeled as to its contents. *Gulf C. & S. F. R. Co. v. Clement*, 220 S. W. 407 (Tex. Civ.)

Delay to cut out oil cars from a fire which had begun on other cars in a wreck, held negligence. *Henry v. Cleveland, etc., R. Co.*, 67 Fed. 426.

Statutory Liability.

An Ohio Statute making a natural gas company liable for accidents arising from gas in transportation without regard to negligence was upheld in *Ohio Gas-Fuel Co. v. Andrews*, 50 Ohio St. 695, 29 L.R.A. 337, 35 N. E. 1059.

Miscellaneous Cases.

It is negligence for an employee at a filling station, to begin pouring gasoline before he is certain that the customer is ready to receive it. *Sanders v. Austin* (Cal.) 182 Pac. 449.

A pipe line crossed the highway on the surface. A heavily loaded wagon or truck broke the pipe, the oil escaped, caught fire and burned the threshing machine which it carried. The owner of the machine was held entitled to damages. *Thompson v. Union Traction Co.*, 103 Kan. 104, 172 Pac. 990.

In *Snyder v. Philadelphia Co.*, 54 W. Va. 149, 102 Am. St. Rep. 941, 1 Ann. Cas. 225, 63 L.R.A. 896, 46 S. E. 366, the company was held for frightening horses by negligently blowing off the well. The excessive oiling of a street was held to make the city liable. *Kelleher v. City of Newburyport*, 227 Mass. 462, 116 N. E. 806.

Pouring kerosene from the can into the stove is negligence per se. *McLawson v. Paragon Ref. Co.*, 198 Mich. 222, 164 N. W. 668.

Parties.

That a well was sunk by an independent contractor does not relieve the lessee from damages for negligence of the contractor. *Minnetonka Oil Co. v. Haviland*, 55 Okla. 43, 155 Pac. 217.

Rule of Evidence.

In the suit for damages by fire from a pumping station plaintiff is not bound to exclude every possible theory as to the cause of the fire. *Ramage v. Producers, etc., Co.*, 259 Pa. 491, 103 Atl. 336.

Killing Well.

Plaintiff had an oil well producing heavily. Defendant, adjoining lessee, sank a dry well, which when open let air into plaintiff's well. Defendant refused to plug his dry well, which would have ended the injury. The Court quotes the civil law and holds that where keeping open the dry well does harm to plaintiff with no benefit to defendant a good cause exists. *Higgins O. & F. Co. v. Guaranty Co.* (La.) 82 So. 206.

CHAPTER 43.

NUISANCE.

The inflammable and explosive incidents of oil and gas render them dangerous materials and as such liable to attack under certain conditions as nuisances. Even mining and quarrying have been attacked and sometimes successfully, as nuisances. *Cavanaugh v. Corbin Co.* (Mont.) 174 Pac. 184; *Brede v. Minnesota, etc., Co.* (Minn.) 173 N. W. 805. *Fagan v. Silver*, 188 Pac. 900 (Mont.). But relief against the operation of an ordinary coal mine was refused in *Alexander v. Wilkesbarre, etc., Co.* 254 Pa. 1, L.R.A.1917B, 310, 98 Atl. 794.

Oil Wells.

The charge of nuisance against the well itself has not been often made. Of course there must be mischievous incidents to enjoin the carrying on of a lawful business and such cannot exist unless in a built up neighborhood or under other unusual conditions. Injunction against the drilling of a gas well 152 feet from a dwelling was refused when it was not shown that it could not be operated so as to be harmless. *Windfall Mfg. Co. v. Patterson*, 148 Ind. 414, 62 Am. St. Rep. 532, 37 L.R.A. 381, 47 N. E. 2, 18 M. R. 674. If there is any way the well can be operated so as not to make it a nuisance it will be protected. *McGregor v. Camden*, 47 W. Va. 193, 34 S. E. 936, 20 M. R. 274.

Every landowner has the right to develop the natural resources of his land and in the absence of negligence is not liable for the necessary consequences. *Brede v. Minn. Crushed Stone Co.* (Minn.) 173 N. W. 805. This clear ruling is cited, and declared to have special application to mines, oil wells, and quarries in a case where a church unsuccessfully complained that it was disturbed by the noisy use of ore bins and the tramway

leading from them. *Arizona Hercules Copper Co. v. Protestant Episcopal Church Corp.*, 190 Pac. 85 (Ariz.).

The mere danger of fire is not enough to prove a nuisance. *Pope v. Bridgewater Gas Co.*, 52 W. Va. 252, 43 S. E. 87.

One who buys surface rights reserved under an oil lease takes the burden of all legitimate annoyance from the necessary operations of the driller. *Grimes v. Goodman Drilling Co.* (Tex. Civ. App.) 216 S. W. 202.

The pumping machinery of an oil well does not come within the law of attractive nuisances. *Pennington v. Little Pirate Oil Co.* (Kan.) 189 Pac. 137.

A statute forbidding operating a well within 100 feet of a railroad right of way was held good, which was practically confiscation without compensation. *Winkler v. Anderson*, 104 Kan. 1, 177 Pac. 521.

In this case there were two wells already sunk and producing oil and from the statement of facts the well of a third party was perilously close to these wells, so that danger of drainage was imminent. The Court says: "The plaintiff's lease is entirely valueless if the Statute be valid." The decision is placed solely on the police power and the reason advanced to sustain its exercise in this instance is not convincing.

Obstructing Highways.

The operation from the surface for oil and gas was enjoined as an obstruction to a highway in *Boone v. Clark* (Tex. Civ. App.) 214 S. W. 607.

Gasoline Stations, Refineries.

A gasoline station on a crowded street is practically declared a public nuisance in *Oriental Oil Co. v. City of San Antonio* (Tex. Civ. App.) 208 S. W. 177. The same as to gasoline tanks under like conditions. *McGuffey v. Pierce Fordyce Oil Assn.* (Tex. Civ. App.) 211 S. W. 335; *O'Hara v. Nelson*, 71 N. J. Eq. 629, 63 Atl. 842; *Whittemore v. Baxter Laundry Co.*, 181 Mich. 564, Ann. Cas. 1916C 818, 52 L.R.A.(N.S.) 930, 148 N. W. 437.

An oil refinery permitting its refuse to overflow lands, makes it a nuisance, and its owner liable in damages. *Helms v. Eastern Kansas Oil Co.*, 102 Kan. 164, L.R.A.1918C 227, 169 Pac. 208.

Gas Works.

The erection of gas works in a residence neighborhood may be enjoined or may be allowed under restrictions. *Cleveland v. Citizens' Gas L. Co.*, 20 N. J. Eq. 201; *Judson v. Los Angeles, etc., Gas Co.*, 157 Cal. 168, 21 Ann. Cas. 1247, 26 L.R.A.(N.S.) 183; *McGill v. Pintsch Compressing Co.*, 140 Iowa 429, 20 L.R.A.(N.S.) 466, 118 N. W. 786. But to obtain damages on account of the nuisance of gas works, substantial annoyance must be proved. *Sherman Gas, etc., Co. v. Belden*, 103 Tex. 59, 27 L.R.A.(N.S.) 237, 123 S. W. 119.

Gas works have been held liable for the pollution of wells or springs. *Columbus Gas Light & Coke Co. v. Freeland*, 12 Ohio St. 392; *Kinnaird v. Standard Oil Co.*, 89 Ky. 468, 25 Am. St. Rep. 545, 7 L.R.A. 451, 12 S. W. 937 (the seepage from an Oil Storehouse); *Ottawa Gaslight, etc., Co. v. Grahaur*, 28 Ill. 73, 81 Am. Dec. 263, 35 Ill. 346; *Anstee v. Monroe, Light & F. Co.*, 177 N. W. 26.

Kinsman v. Utah Gas, etc., Co. (Utah) 177 Pac. 418, was an action to declare the Salt Lake City Gas Works a nuisance. The Court denied an injunction but the individual complainants were allowed to recover, each his separate damages.

CHAPTER 44.

FIXTURES.

Frequent disputes as to removal of the casing or of the oil rig, bring up questions which have become generally settled in favor of the lessee, that is, of the right of removal.

What Are Removable Fixtures.

Machinery placed on a mine is personal property and the owner may sell or mortgage it as such. *Powell v. Plank*, 141 Mo. App. 406, 125 S. W. 836.

A combustion engine and other chattels affixed to the land but removable by loosening certain bolts are chattels. *Seward Dredging Co., in re*, 242 Fed. 225, 155 C. C. A. 65.

Machinery and fixtures used for the purpose of drilling for oil and gas do not become permanent irremovable fixtures. *Perry v. Acme Oil Co.*, 44 Ind. App. 207, 88 N. E. 859.

Roseburg Bank v. Kamp, considers what are and what are not fixtures on sale of a placer mine, holding that the pipes and giant are not parcel of the realty. *Rosenburg Nat. Bank v. Camp*, 89 Or. 67, 173 Pac. 313.

Whatever fixtures can be removed without injury to the realty may be removed—this includes “machinery or materials used in drilling wells, or in pumping, storing or conveying the oil.” *Gillespie v. Fulton O. I. & G. Co.*, 239 Ill. 326, 88 N. E. 192. Machinery for drilling a salt well is a removable fixture. *Bewick v. Fletcher*, 41 Mich. 625, 32 Am. Rep. 170, 3 N. W. 162, 6 M. R. 117.

The mortgage of a building with its appurtenances covers the land on which it stands and in this case its pumping plant. *Muckle v. Hill* (Idaho) 187 Pac. 943.

The lessee had the right to remove the casing from an abandoned well under a lease allowing the removal of machinery and

fixtures. *Collins v. Mt. Pleasant Oil & G. C.* 85 Kan. 483, 38 L.R.A.(N.S.) 134, 118 Pac. 54.

Time to Remove.

The oil rig, casing and tanks, on a forfeited leasehold belong to the tenant and he has a reasonable time to remove them. *Gartland v. Hickman*, 56 W. Va. 75, 67 L.R.A. 694, 49 S. E. 14; *Mickle v. Douglas*, 75 Iowa 78, 39 N. W. 198, 17 M. R. 137; *Cassell v. Crothers*, 193 Pa. 359, 44 Atl. 446, 20 M. R. 160.

The Tenant has a reasonable time to remove fixtures but the words "at any time" in the lease, mean only a reasonable time. *Perry v. Acme Oil Co.*, 44 Ind. App. 207, 88 N. E. 859.

What amounts to reasonable time is to be ascertained from all the facts in the case. *Gartland v. Hickman*, 56 W. Va. 75, 67 L.R.A. 694, 49 S. E. 14; *Berger v. Hoerner*, 36 Ill. App. 360, and where the lease read that the fixtures might be removed "at any time" it was held that the lessee could not wait until years after the lease expired.

Eight months after abandonment is not an unreasonable time for lessee to enter and remove fixtures. *Standard Oil Co. v. Barlow*, 141 La. 52, 74 So. 627.

Casing.

The casing may or may not be a removable fixture. The lessee has no right to remove it where it would render the well valueless and the lessor may protect himself by injunction. *Meyers v. Shertzer* (*Shertzer v. Myers*) 82 Kan. 275, 108 Pac. 105. The lessee is not allowed to remove fixtures which cannot be taken out without destroying the well. *Powers v. Bridgeport Oil Co.*, 238 Ill. 397, 87 N. E. 381. But in *Shellar v. Shivers*, 171 Pa. 569, 33 Atl. 95, 18 M. R. 260, the casing was held to be a trade fixture and removable if removed in time.

When Real Estate.

A levy on an oil derrick engine and boiler attached to the realty, is to be made as a levy on real estate, and not as on personalty. *Titusville Novelty Iron Works Appeal*, 77 Pa. 103.

The same as to a tax sale. *Johnson v. Sidey*, 59 Ind. App. 678, 109 N. E. 934.

Contest between Lessees.

Altho a second lease is adjudged invalid, the first lessee has no right to the fixtures placed by the second lessee. *Linden Oil Co. v. Jennings*, 207 Pa. 524, 56 Atl. 1074.

CHAPTER 45.

PUMPING.

Pumping.

Except in the case of flowing wells no oil can be got to the surface without the use of pumps. The necessity of pumps is so self evident that practically no legal protest has ever been urged against it. Certainly none has been sustained.

Not only has the owner the right to pump but he has the right to use explosives to shatter the containing rock and induce an increased flow of oil, and may use any other artificial means to increase the product of his well.

But there are limitations asserted against every abstract right and such a limitation was debated in a well known case in Indiana.

In that State there was a statute of 1891 intended to protect the supposed natural pressure of gas. Under that Act defendant was restrained from producing by pumps an increased flow of gas from the well. *Manufacturers Gas & Oil Co. v. Indiana, etc., Oil Co.*, 155 Ind. 461, 50 L.R.A. 768, 57 N. E. 912, 20 M. R. 672, 155 Ind. 566, 58 N. E. 851, 21 M. R. 139. *Richmond Natural Gas Co. v. Enterprise Natural Gas Co.*, 31 Ind. App. 222, 66 N. E. 782, is to the same effect.

Both these cases refer to the presence of salt water as a danger to the well, but shed little light on how the facts induced the danger.

In *Consumers' Gas Trust Co. v. American Plate Glass Co.*, 162 Ind. 393, 68 N. E. 1020, an injunction was refused against a pumping station to a pipe line which did not exceed 300 lbs. pressure and did not increase the natural pressure at the wells.

A second case between the *Manufacturers Gas & Oil Co.* and the *Indiana, etc., Oil Co.*, 156 Ind. 679, 59 N. E. 169, 60 N. E. 1080, 21 M. R. 194, decides that special injury to the property must be

shown, and that the allegation as to use of excess pressure in the transportation of the gas did not show the use of excess pressure in its production.

The constitutionality of the Act had already been upheld in *Jamieson v. Indiana, etc., Oil Co.*, 128 Ind. 555, 12 L.R.A. 652, 28 N. E. 76, as an exercise of the police power, the opinion enlarging on the dangerous properties of oil and gas.

The Act seems to contain two independent propositions (1) The power to limit the pressure for the production of the gas and (2) The power to limit the pressure on its transportation. The first is a very doubtful proposition and the second seems entirely indefensible, the danger from explosive and other noxious qualities of these substances having very little to do with the prohibited pressure. Olds J., in the *Richmond Co. case supra*, filed a dissenting opinion holding that the Act was an exercise of arbitrary power prohibited by the constitution, with which dissenting opinion many lawyers familiar with the subject matter would thoroughly agree.

In *Jones v. Forest Oil Co.*, 194 Pa. 379, 48 L.R.A. 748, 44 Atl. 1074, the Court held the use of gas pumps to be legal.

The owner of a gas well may be restrained from pumping or using any other device to induce an unnatural flow into his own well. *Manufacturers' Gas & Oil Co. v. Indiana Natural Gas Co.*, 155 Ind. 461, 50 L.R.A. 768, 57 N. E. 912, 20 M. R. 672; *Richmond Natural Gas Co. v. Enterprise Natural Gas Co.*, 31 Ind. App. 222, 66 N. E. 782.

The Saratoga Water Case.

In New York an Act was passed to protect the Sanitary Springs at Saratoga. It forbade all pumping whatever with a special paragraph prohibiting the extraction of the water for the purpose of utilizing its carbonic acid gas so as to sell this gas separated from the water. The Court held, as a matter of course, that the prohibition of pumping was an absolute deprivation of the property rights of the owner and therefore void, but sustained the prohibition as to pumping for the purpose of extracting the carbonic acid. The decision was based on the fact that in the extraction of the carbonic acid gas the mineral salts

of the water were wasted and the further fact that defendants were unreasonably diminishing the common supply.

There is force in the first reason (if based on fact), and that absolute and useless waste may be prohibited has been justly and almost uniformly sustained, but the second reason is more debatable and suggests the question, impossible to answer: At what point does the one draining the mineral water or oil begin to take more than his legitimate supply? HAIGHT, J., filed a dissenting opinion. *Hathorn v. Natural Carbonic Gas Co.*, 194 N. Y. 326, 128 Am. St. Rep. 555, 16 Ann. Cas. 989, 23 L.R.A. (N.S.) 436, 87 N. E. 504, Affg. 128 App. Div. 33, 112 N. Y. Supp. 374; *Lindsley v. Natural Carbonic Gas Co.*, 162 Fed. 954.

The Act coming before the Federal Supreme Court on appeal from the last cited case, was sustained as not in violation of the 14th amendment and the State's construction in the *Hathorn* case was approved. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, Ann. Cas. 1912C, 160, 55 L. ed. 369, 31 Sup. Ct. 337.

CHAPTER 46.

SHOOTING WELL.

The Right to Shoot

The well has not been seriously questioned. In *People's Gas Co. v. Tyner*, 131 Ind. 277, 31 Am. St. Rep. 433, 16 L.R.A. 443, 31 N. E. 59, 17 M. R. 481, it was held that the fact that such shooting might diminish the supply of natural gas to a neighboring owner was no reason to enjoin the shooting. If the owner has the right to take the gas at all he has the right to take all he can get. In another suit between the same parties it was alleged that defendant had brought a large quantity of nitro glycerine to his well with the intention of shooting it. The Court repeated its ruling in the first case that he had the right to shoot the well even if it brought in gas from other ground, but that he had no right to bring the explosives into a neighborhood where it might do injury. It will of course be conceded that no person has a right to keep such explosives stored in a building neighborhood, but if he had the right to shoot the well he certainly had the right to bring in the explosives for that purpose. This well was 1000 feet deep and the explosion itself could do no surface injury. *Tyner v. Peoples Gas Co.*, 131 Ind. 408, 31 N. E. 61.

When Not Bound to Shoot.

In a "paying quantity" case it was held that a party was not bound to shoot the well where it showed only a trace of oil. "A torpedo may make a well flow more freely but it will not produce oil from barren sand." *Rice v. Ege*, 42 Fed. 661, 664, 16 M. R. 179.

Premature Explosion.

Where a contractor agreed to shoot a well but by a premature explosion the well was ruined the contractor was held not liable to the owner in the absence of proof of negligence. *Davidson v. Humes*, 188 Pa. 335, 41 Atl. 649. This report contains a full and interesting account of the process of shooting a well. A similar decision is *East End Oil Co. v. Pennsylvania Torpedo Co.*, 190 Pa. 350, 42 Atl. 707, holding that the *maxim res ipsa loquitur* did not apply.

CHAPTER 47.

WASTE OF OIL OR GAS.

The Wanton Waste

of gas has been prohibited by statute in several States, and a right of action for such waste may arise in favor of the lessor. *Talbott v. Southern Oil Co.*, 60 W. Va. 423, 55 S. E. 1009. Or even in favor of one who has only an interest in the common gas field. *Calor Oil & Gas Co. v. Franzell*, 128 Ky. 715, 36 L.R.A. (N.S.) 456, 109 S. W. 328. And exemplary damages may be awarded for malicious waste. *Louisville Gas Co. v. Kentucky Heating Co.*, 117 Ky. 71, 111 Am. St. Rep. 225, 4 Ann. Cas. 355, 70 L.R.A. 558, 77 S. W. 368.

An Indiana Act allowed only two days to confine the gas or oil before becoming liable to a penalty, and the statute was held valid. *Given v. State*, 160 Ind. 552, 66 N. E. 750; *Ohio Oil Co. v. Indiana*, 177 U. S. 190, 44 L. ed. 729, 20 Sup. Ct. Rep. 576, 20 M. R. 466.

The wanton waste of gas gives a cause of action to any party injured. *Louisville Gas Co. v. Kentucky Heating Co.*, *supra*.

Equity may enjoin waste or damages may be recovered as between claimants of conflicting rights to the wasted oil. *Gillespie v. Fulton O. & G. Co.*, 236 Ill. 188, 86 N. E. 219. And the State may enjoin the waste of gas as a nuisance. *State v. Ohio Oil Co.*, 150 Ind. 21, 47 L.R.A. 627, 49 N. E. 809, Affirmed *Ohio Oil Co. v. Indiana*, 177 U. S. 190, 44 L. ed. 729, 20 Sup. Ct. 576, 20 M. R. 466. The malicious waste of mineral water was enjoined in *Gaynon v. French Lick, etc., Co.*, 163 Ind. 687, 68 L.R.A. 175, 72 N. E. 849. And conviction may be had under the penal Act on the same subject. *Bailey v. State*, 163 Ind. 165, 71 N. E. 655; *Commonwealth v. Trent*, 117 Ky. 34, 4 Ann. Cas. 209, 77 S. W. 390. It was refused on general principles when without malice in *Hague v. Wheeler*, 157 Pa. 324, 37 Am. St. Rep. 736, 22 L.R.A. 141, 27 Atl. 714.

The gas waste Statute will not be enforced at the suit of a private individual altho this does not bar his personal action for special injury. *Arnold v. Garnett Light Co.* (Ariz.) 174 Pac. 1027.

Plugging the Well.

The Kentucky Act to compel the plugging of natural gas wells not in use was enforced in *Commonwealth v. Trent*, 117 Ky. 34, 4 Ann. Cas. 209, 77 S. W. 390.

The Indiana Statute is referred to in a suit between individuals where a party had agreed to plug a well. Only an "owner" under the Statute is penalized for not plugging. *McDonald v. Carlin*, 163 Ind. 342, 71 N. E. 961.

Adjoining owners may plug a well which the owner has failed to plug. *Commonwealth v. Trent*, 117 Ky. 34, 4 Ann. Cas. 209, 77 S. W. 390.

The Ohio Act seems to be drawn not merely to prevent the escape of the oil and gas, but to require filling with cement to protect the surrounding gas field. *State v. Oak Harbor Gas Co.*, 53 Ohio St. 347, 41 N. E. 584.

Under the Kansas Act requiring abandoned oil wells to be plugged, the duty devolves on the owner and not the operator. The Court in construing a criminal Statute will not add omitted words on the ground that the reason of the case would apply to the operator as well as to the owner who should have been included in framing the Statute. *State v. Foster*, 189 Pac. 953 (Kan.).

Flambeaux Lights.

The Act forbidding waste of natural gas in flambeaux lights is constitutional. *Townsend v. State*, 147 Ind. 624, 62 Am. St. Rep. 477, 37 L.R.A. 294, 47 N. E. 19.

The wasteful use of natural gas in flambeaux has been superseded by more economical methods and a contract to furnish gas will not be construed to allow flambeaux. *Hall v. Philadelphia Co.*, 72 W. Va. 573, 78 S. E. 755. The same subject is discussed in *Saltsburg Gas Co. v. Borough of Saltsburg*, 138 Pa. 250, 10 L.R.A. 193, 20 Atl. 844.

CHAPTER 48.

JURISDICTION.

Jurisdictional Questions.

There are few points that arise under this head, not common to all kinds of property. On the point of jurisdiction where the Courts of one State are called on to adjudicate on oil production, it has been held that a receiver may be appointed for an oil and gas lease beyond the jurisdiction. *Huston v. Cox*, 103 Kan. 73, 172 Pac. 992.

Specific performance of an agreement for an oil lease in another State was denied in *Wilhite v. Skelton*, 5 Ind. Terr. 621, 82 S. W. 932, but the contrary was ruled on a pipe line contract in *Texas Co. v. Central Fuel Oil Co.*, 194 Fed. 1, 114 C. C. A. 21.

The jurisdiction depends generally upon the familiar distinction between transitory and local actions which is discussed in *Peyton v. Desmond*, 129 Fed. 1, 63 C. C. A. 651, where Timber Trespass in Wisconsin was allowed to be tried in Minnesota. It cites two cases: *Ellenwood v. Marietta Chair Co.*, 158 U. S. 105, 39 L. ed. 913, 15 Sup. Ct. 771, and *Stone v. United States*, 167 U. S. 178, 42 L. ed. 127, 17 Sup. Ct. 778, which seem to allow the action where it is trover and to deny it where the suit is for the original trespass.

The Court in Massachusetts refused to entertain a suit for ore taken by trespass from a mine in Arizona. *Arizona, etc., Co. v. Iron Cap Co.* (Mass.) 124 N. E. 281.

To any one familiar with the subject of either oil or ore taken by alleged trespass, the unfairness and oppression which would result in most cases by allowing trial in a distant state, is perfectly manifest whether the action be for the original taking or for the conversion of the mineral.

On a partnership accounting the Court, having jurisdiction of the parties, may decree the disposition of mining leases outside the State. *Apple v. Smith* (Kan.) 185 Pac. 903.

A federal Court has jurisdiction to relieve against fraud, altho the subject matter of the case is in a foreign country, where it has acquired personal jurisdiction over the defendant. *Vacuum Oil Co. v. Eagle Oil Co.*, 154 Fed. 867, an oil trade mark case.

CHAPTER 49.

EJECTMENT.

History of the Action.

Ejectment is a form of action for the recovery of real estate—of mines or any other corporeal hereditament capable of delivery by the sheriff. It is a writ of an origin in as early as the reign of Edward IV. if not earlier. Its history is given in 3 Blackstone 199, and outside of legal authorities a clear idea of it is to be learned from Warren's celebrated novel "Ten Thousand a Year."

To recover in this action, the plaintiff must be entitled to the possession and must win on the strength of his own title which in general must be the legal title; damages follow recovery in a suit for mesne profits and under statutes a losing defendant having made improvements under *bona fide* color of title, may offset them in such action.

The code purports to abolish the action *eo nomine*, but its incidents being indestructible, survive and are constantly referred to in suits styled "actions for the recovery of real estate" or by some other verbiage—which purport to simplify, but really complicate the ancient forms of action.

Right to Jury Trial.

Parties claiming the same land by hostile titles are litigants entitled to jury trial but some of the cases under this head, are suits where Courts of equity under color of chancery jurisdiction attempt to decide the whole controversy and to deny the fundamental right to trial by jury.

It is the proper action wherever the right of possession is at issue between lessor and lessee of oil or gas lands or between the owner or lessee and any party asserting a hostile title, except where as in Illinois there comes an arbitrary distinction against this class of leases.

Where the Action Lies.

Ejectment will lie for recovery of a coal mine or of any incorporeal hereditament of which the sheriff can deliver possession. *Kirk v. Mattier*, 140 Mo. 23, 41 S. W. 252.

A lease for the sole purpose of working for petroleum and other minerals carries a corporeal interest on which ejectment will lie. *Barker v. Dale*, 3 Pittsburg 190, Fed. Cas. No. 988, 8 M. R. 597.

A person having a license to search for oil such as necessitates his taking possession of the premises has such possession as will maintain ejectment. *Dark v. Johnston*, 55 Pa. 164, 93 Am. Dec. 732, 9 M. R. 283.

Where defendants, oil lessees, are in possession, the plaintiff must bring ejectment. *Williams v. Fowler*, 201 Pa. 336, 50 Atl. 969.

Ejectment will lie against a mining lessee so breaching his covenants that the lease has become forfeit. *Kirk v. Mattier*, 140 Mo. 23, 41 S. W. 252.

The plaintiffs were lessees of oil property. The defendants were mere squatters. The Court denied them the right to prove that plaintiffs were not in lawful possession because they had forfeited their lease, that being a question solely between the lessor and his lessee. *Bartley v. Phillips*, 165 Pa. St. 325, 30 Atl. 842.

A lease demising and letting certain land for mining purposes is not a mere license and the lessee may maintain ejectment under it. *Barnsdall v. Bradford Gas Co.*, 225 Pa. 338, 26 L.R.A. (N.S.) 614, 74 Atl. 207. The opinion cites many of the previous Pennsylvania cases on this point but not *Union Petroleum Co. v. Bliven Petroleum Co.*, 72 Pa. 173, which seems to hold *contra*.

No Jurisdiction in Equity.

When defendant is in possession sinking for oil, equity has no jurisdiction, the remedy being at law. *California Oil & Gas Co. v. Miller*, 96 Fed. 12. Equity will not allow a bill for discovery to take the place of ejectment for an oil well—when there are none of the exceptional incidents which give equity jurisdiction:

the remedy is at law. *Erskine v. Forest Oil Co.*, 80 Fed. 583, 18 M. R. 297; *Messimer's Appeal*, 92 Pa. 168; *Long's Appeal*, 92 Pa. 171.

The action may be maintained by the owner against a trespassor altho the claims have been leased to another. *Thompson v. Underwood* (Ark.) 211 S. W. 164.

Where It Does Not Lie.

Ejectment will not in Illinois lie in favor of an oil lessee. *Watford Oil, etc., Co. v. Shipman*, 233 Ill. 9, 122 Am. St. Rep. 144, 84 N. E. 53; *Gillespie v. Fulton Oil, etc., Co.*, 236 Ill. 188, 86 N. E. 219; *Guffey v. Smith*, 237 U. S. 101, 113, 59 L. ed. 856; 35 Sup. Ct. 526. The *Guffey* case in citing these Illinois cases holds that equity will protect the lessee in default of such remedy at law.

Undesignated Drill Sites.

When the lessee had the right to drill on certain specified sites on a demised tract and the right to drill elsewhere only where further sites were designated, he had no such possession of such other sites not designated, as to sustain ejectment—altho he has the right to damages against others taking oil from such non-designated sites. *Duffield v. Rosenzweig*, 144 Pa. 520, 23 Atl. 4.

Adverse Claim Suits.

In an adverse claim suit against an oil placer, each party must stand on and prove his title. *Phillips v. Brill*, 17 Wyo. 26, 95 Pac. 856.

A complaint supporting the adverse may be amended from an equitable form to quiet title, to the form of an ejectment suit. *Green v. Davis* (Colo.) 185 Pac. 369.

Set-Off.

A defendant in ejectment against whom the land has been recovered who, under claim of right had sunk an oil well, is entitled to retain out of the proceeds of the well the cost of sinking. *Phillips v. Coast*, 130 Pa. 572, 18 Atl. 998.

CHAPTER 50.

INJUNCTION, RECEIVER.

An injunction to stay waste has been allowed from time immemorial but a distinction had been made that naked trespass would not be enjoined. *Flamang's case*, unreported, cited in *Mitchell v. Dors*, 6 Vesey, Jr. 147, 7 M. R. 250 is said to be the first instance where this distinction was set aside and trespass enjoined.

It has now become the undisputed practice to allow an injunction and in a proper case appoint a receiver whenever irreparable injury to a mine is threatened, and oil and gas wells are mines within the rule. The limitations to the relief are that the complainant's title must be clear or if disputed he must bring an action at law to make it good.

And it is not allowed when the defendant is entirely solvent so as to be able to respond in damages, or when greater injury would result to defendant than good to plaintiff nor where there has been inexcusable delay.

And from the mere fact of the presence of equity incidents, the Court cannot deny to the defendant the right to defend his title at law, nor can he be deprived of possession by decree. *Bracken v. Preston*, 1 Pin. (Wis.) 584, 44 Am. Dec. 412, 7 M. R. 267; *Brennan v. Gaston*, 17 Cal. 374, 375, 7 M. R. 426.

It is a harsh remedy and only to be resorted to in an urgent case. *Sult v. A. Hochstetter Oil Co.*, 63 W. Va. 317, 318, 61 S. E. 307; *United States v. Honolulu Consol. Oil Co.*, 249 Fed. 167. And is a matter of discretion in a case of conflicting equities. *Texas Pac. Coal & Oil Co. v. Howard* (Tex. Civ. App.) 212 S. W. 735.

Parties.

In suits by lessees against lessees to restrain taking oil the

lessors of both sides are necessary parties. *Steelsmith v. Fisher Oil Co.*, 47 W. Va. 391, 35 S. E. 15; *Moore v. Jennings*, 47 W. Va. 181, 34 S. E. 793. See *South Penn. Oil Co. v. Miller*, 175 Fed. 729, 99 C. C. A. 305; *Pyle v. Henderson*, 55 W. Va. 122, 46 S. E. 791.

Where a lessor has without right repudiated a first lease and let a second to a new party, the allegation that such new party is starting a well on the demised premises, with the usual proper averments, states a case for injunction against the second lessee. *Consumers' Gas Trust Co. v. Crystal W. G. Co.*, 163 Ind. 190, 70 N. E. 366.

When all the gas consumers are parties in interest they need not be made parties but may be represented by the municipality. *San Francisco Gas, etc., Co. v. San Francisco*, 164 Fed. 884.

When the plaintiff's right is limited in time, an injunction should not extend beyond the expiration of that time. *Advance Industrial Supply Co. v. Eagle Metallic Co.*, 109 Atl. 771 (Pa.).

General Principles. Pleading.

Oil lessees should not be enjoined on doubtful facts. *Hicks v. American National Gas Co.*, 207 Pa. 570, 65 L.R.A. 209, 57 Atl. 55. And a preliminary injunction ought not to issue to prevent sinking for oil where the sinking would be of benefit to the complainant instead of an injury. *French v. Brewer*, 3 Wall. Jr. 346, Fed. Cas. No. 5,096, 11 M. R. 108.

All the facts are to be considered on petition to enforce forfeiture for failure to sink and the petition should negative all the inferences which would suggest denial of such relief. The refusal of injunction was upheld. *Emde v. Johnson* (Tex. Civ. App.) 214 S. W. 575.

Where plaintiff's title is undisputed he may enjoin the extraction of gas by one who has no right to it, without necessity of suit to try the title. *Columbia Gas & Electric Co. v. Moore*, 81 W. Va. 164, 93 S. E. 1051.

Preliminary injunction when allowed and when to be refused in contest between oil lessees. *Poterie Gas Co. v. Poterie*, 153 Pa. 10, 25 Atl. 1107; *Poterie v. Poterie Gas Co.*, 153 Pa. 13, 25 Atl. 1107.

Equity has no jurisdiction on bill for injunction to decide the title properly triable in ejectment by a jury. *Erskine v. Forest Oil Co.*, 80 Fed. 583, 18 M. R. 297; *California Oil & Gas Co. v. Miller*, 96 Fed. 12.

Remedy at Law Inadequate.

Injunction will lie because damages are not sufficient remedy against party wrongfully taking natural gas. *Indianapolis Natural Gas Co. v. Kibbey*, 135 Ind. 357, 35 N. E. 392, 17 M. R. 677.

When a party enters on land under a void lease, (one made by a guardian without proper authorization) and drills for oil, he is subject to perpetual injunction and to cancellation of the lease and the cause is to be held for all incidental relief. The point made against the ruling was that there was a remedy at law, but the Court held that such remedy was inadequate. *Haskell v. Sutton*, 53 W. Va. 206, 44 S. E. 533.

It is no defense to an action to enjoin the lessor from interference with the lessee, that a remedy at law exists; the suggested remedy of unlawful detainer being wholly inadequate. *Wright v. Gillespie*, 261 Fed. 46.

Irreparable Injury.

The unlawful removal of oil or gas is an irreparable injury. *Bettman v. Harness*, 42 W. Va. 433, 36 L.R.A. 566, 26 S. E. 271, 18 M. R. 500; *Moore v. Jennings*, 47 W. Va. 181, 34 S. E. 793.

Injunction to restrain the taking of oil will not lie where the alleged trespasser is solvent and there is no threatened irreparable injury. Equity will not interfere where ejectment is the proper remedy. *Erskine v. Forest Oil Co.*, 80 Fed. 583, 18 M. R. 297. In this case the peculiar incident is noted that while defendant was charged with taking complainant's oil the evidence tended to show that such taking prevented it being drained by third parties.

Against Drilling or Cutting Off Gas.

The erection of a drilling rig necessarily implies the intent to remove any oil or gas which might be discovered. Such an al-

legation justifies a temporary injunction it not being necessary at that period in the case, to show all that is required on the final hearing. *Risch v. Burch*, 175 Ind. 621, 95 N. E. 123.

Injunction will lie to prevent cutting off supply of natural gas. *Simpson v. Pittsburgh Plate Glass Co.*, 28 Ind. App. 343, 62 N. E. 753. And the essentials of the complaint in such a case are stated in *Xenia Real Estate Co. v. Macy*, 147 Ind. 568, 47 N. E. 147.

The mere anticipation of danger from fires is not enough to enjoin the drilling of a new well, eighty feet distant from an already producing well. *Pope Bros. v. Bridgewater Gas Co.*, 52 W. Va. 252.

Against Drainage.

An oil lessee or his assignee may be protected by injunction against others draining demised tract. *Duffield v. Hue*, 136 Pa. 602, 20 Atl. 526; *Duffield v. Rosenzweig*, 144 Pa. 520, 23 Atl. 4; *Williamson v. Jones*, 43 W. Va. 562, 64 Am. St. Rep. 891, 38 L.R.A. 694, 27 S. E. 411, 19 M. R. 19; *Moore v. Jennings*, 47 W. Va. 181, 34 S. E. 793; *Smith v. Root*, 66 W. Va. 633, 30 L.R.A. (N.S.) 176, 66 S. E. 1005; *Gillespie v. Fulton Oil & Gas Co.*, 236 Ill. 188, 86 N. E. 219; *Elk Fork Oil & Gas Co. v. Jennings*, 84 Fed. 839; *Logan Natural Gas, etc., Co. v. Great Southern Gas, etc., Co.* 126 Fed. 623, 61 C. C. A. 359.

On motion to enjoin the drilling of an oil well the Court will consider the danger of drainage from outside wells the possible loss to the plaintiff and the damage to the party who has started to drill. *Texas Pac. Coal & Oil Co. v. Howard* (Tex. Civ. App.) 212 S. W. 735.

Instances Where Allowed.

Lessee of the exclusive right to drill may enjoin the sinking of a well on a right of way crossing the demised tract. *Consumers' Gas Trust Co. v. American Plate Glass Co.*, 162 Ind. 393, 68 N. E. 1020.

The forcible removal of a pipe line will be enjoined. *Wichita Natural Gas Co. v. Ralston* (*Ralston v. Wichita Natural Gas Co.*)

81 Kan. 86, 105 Pac. 430. But the construction of a pipe line nearly finished will not be enjoined, the remedy in damages being complete. *Consumers Gas Trust Co. v. American Plate Glass Co.*, 162 Ind. 393, 68 N. E. 1020.

Drilling wells within 200 ft. of buildings contrary to stipulation of lease was enjoined in *Kelly v. T. W. Phillips Gas & Oil Co.*, 262 Pa. 412, 105 Atl. 631. And the storage of gasoline in a frame building locality in *O'Hara v. Nelson*, 71 N. J. Eq. 629, 63 Atl. 842.

When Denied.

Injunction in a proper case, may be used to protect against breach of terms of lease where legal remedy is inadequate, but not where only nominal damages could be recovered. *Advance Oil Co. v. Hunt* (Ind. App.) 116 N. E. 340.

The Court will not protect by injunction a lessee where lease contains the surrender clause. The surrender clause does not make the lease invalid but would defeat specific performance and as the Court holds, forbids injunctive relief. *Ulrey v. Keith*, 237 Ill. 284, 86 N. E. 696, citing *Watford Oil & Gas Co. v. Shipman*, 233 Ill. 9, 122 Am. St. Rep. 144, 84 N. E. 53.

The doctrine that because of certain unilateral elements in the contract, equity will not afford relief by specific performance to the oil lessee, is according to equity precedents. But the further sequence that such a lease altho legal will not be protected in equity against a trespasser as held above was repudiated by the Federal Supreme Court, citing this Keith case, in *Guffey v. Smith*, 237 U. S. 101, 114, 59 L. ed. 856, 35 Sup. Ct. 526, followed by *Washburn v. Gillespie*, 261 Fed. 41.

Injunction was refused against the drilling of an oil well through the spaces of a coal mine, defendant being required to take proper precautions against the escape of gas into the mine. *Armstrong v. Auen*, 17 M. R. 392, 21 Pittsburgh Legal Journal 395. And it was refused against drilling through worked out coal beds or through possible deep coal beds not known to exist. *Rend v. Venture Oil Co.*, 48 Fed. 248.

The decrease in the supply of natural gas was considered as a defense to injunction sought by a customer for nonsupply in

Black Lick Mfg. Co. v. Saltsburg Gas Co., 139 Pa. 448, 21 Atl. 432.

Decree Cannot Change Possession.

The Court has no right to so decree by injunction as to deprive a party of possession. *Bettman v. Harness*, 42 W. Va. 433, 36 L.R.A. 566, 26 S. E. 271, 18 M. R. 500. An exception to this rule is that a mandatory injunction may issue where possession has been taken by violence or in contempt of a Court order. *Sprague v. Locke*, 1 Colo. App. 171, 28 Pac. 142; *Cole v. Cady*, 2 Dak. 29, 3 N. W. 322.

A preliminary injunction is intended to preserve the present status and has no right to anticipate the final decree, especially as to transfer of possession. *Bettman v. Harness*, *supra*.

Lessees Fixtures.

An injunction against a defeated party should not cover his personal property not attached to the freehold or which could be removed without injury to the freehold. *Gillespie v. Fulton O. & G. Co.*, 239 Ill. 326, 88 N. E. 192; *Cassell v. Crothers*, 193 Pa. 359, 44 Atl. 446.

Damages Not Waived.

Injunction to prevent waste and damage for loss of gas may be allowed but the suit to enjoin of itself is no waiver of damages. *Louisville Gas Co. v. Kentucky Heating Co.*, 132 Ky. 435, 111 S. W. 374.

Attempting Self-relief.

The lessor in a gas lease has no right to turn off the gas by his own Act, but if injured, must apply to the Courts. *State v. Moore*, 27 Ind. App. 83, 60 N. E. 955, 21 M. R. 401.

Receiver.

A receiver for oil wells will not be appointed except in an urgent case and not where its practical effect is to destroy the

lease where no intentional breach has been made and no irreparable damage being done. *Chicago & A. Oil, etc., Co. v. United States Petroleum Co.*, 12 M. R. 570, 57 Pa. 83.

The Court may appoint a receiver to see that the claims are saved to the rightful owner by the performance of the annual labor. *Nevada Sierra Oil Co. v. Home Oil Co.*, 98 Fed. 673, 20 M. R. 283.

The royalty is a first charge on the funds coming into the hands of the receiver. *Allison v. Coal Creek & N. R. Coal Co.*, 87 Tenn. 60, 9 S. W. 226.

Pay for Tools. Costs.

The receiver should pay compensation for use of tools and machinery and a party not benefited should not be charged with receiver's costs. *Midland Oil Co. v. Turner*, 179 Fed. 74, 102 C. C. A. 368; *United States v. Midway, etc., Oil Co.*, 232 Fed. 619.

CHAPTER 51.

TRESPASS, TROVER.

The Codes purport to abolish the forms of action but their distinctions are inherent and remain under any system of pleading. Trover lies for the value of personal property wrongfully converted by defendant: Trespass for the act of taking it, altho in both the measure of damages may be the same. This distinction is stated in *Peyton v. Desmond*, referred to under jurisdiction page 189.

The owner of the land cannot maintain trover for oil extracted from the realty by a party in possession under color of title. *National Transit Co. v. Weston*, 121 Pa. 485, 15 Atl. 569, 17 M. R. 143. A note to the case in the Mining Reports cites the authorities sustaining this principle of law. See also Mining rights 15th ed. 432.

Oil extracted by a wrongdoer remains the owner's property. *Hail v. Reed*, 15 B. Mon. (Ky.) 479, 11 M. R. 103; *Hughes v. United Pipe Lines*, 119 N. Y. 423, 23 N. E. 1042.

Natural gas extracted from the earth and put into pipe line is personal property and where the valves were opened and the gas tapped it was a conversion of the same. *Crystal Ice, etc., Co. v. Marion Gas Co.*, 35 Ind. App. 295, 74 N. E. 15.

For the measure of damages in trespass and for conversion of Oil see chap. 54.

CHAPTER 52.

SPECIFIC PERFORMANCE.

There is nothing in the nature of oil and gas contracts to prevent decree for specific performance when the proper foundation for such relief exists. But they have been constantly refused on unilateral contracts not binding the complainant to performance on his part.

Bill Must Allege Consideration.

In a specific performance case against a vendor, it is necessary to allege that he received an adequate consideration. *Ehrhart v. Mahony* (Cal. App.) 184 Pac. 1010.

When Granted.

Specific performance of contract to give or to assign an oil lease may be decreed. *Colm v. Francis*, 30 Cal. App. 742, 159 Pac. 237; *King v. Gants* (Okla.) 186 Pac. 960. A covenant to furnish gas for heat and light may be enforced. *Hall v. Philadelphia Co.*, 72 W. Va. 573, 78 S. E. 755.

Expenditure on Permanent Improvements

under promise of a deed will justify a bill for specific performance. This is so decided in the clearest terms in a marriage engagement contract case. *Neale v. Neales*, 9 Wall (U. S.) 1, 19 L. ed. 590.

Bids Advertised For.

When a mine owner advertises for bids on a lease and the offer contained in the advertisement is accepted, the intended lessee has the right to enforce specific performance of the lease on the usual terms and the lessor cannot insist on new and arbitrary

terms such as the sinking of a 600 foot shaft. *Cochrane v. Justice M. Co.*, 16 Colo. 415, 26 Pac. 780.

When Denied.

An ordinary contract for the sale of all the oil from a certain well, will not be specifically enforced, nor its sale to others enjoined, the plaintiff having a complete remedy at law for damages. *Simms v. Southern Pipe Line Co.* (Tex. Civ. App.) 195 S. W. 283. But it was allowed under the strong facts in *Texas Co. v. Central Fuel Oil Co.*, 194 Fed. 1, 114 C. C. A. 21. Equity will not decree specific performance of a contract which is not certain, fair and just, nor where performance by the complaining party is entirely optional; applying this rule because the oil lease contained the surrender clause. *Mellton v. Cherokee Oil, etc., Co.* (Okla.) 170 Pac. 691; *Watford Oil and Gas Co. v. Shipman*, 233 Ill. 9, 122 Am. St. Rep. 144, 84 N. E. 53.

Furnishing gas from a foreign well is neither possession nor part performance in a *specific performance* case. *Hancock v. Diamond Plate Glass Co.*, 162 Ind. 146, 70 N. E. 149.

Equity will not decree specific performance of a contract which is not fair or where performance by the complainant is entirely optional, altho the contract be good at law, and there is no sufficient ground for its cancellation. *Federal Oil Co. v. Western Oil Co.*, 121 Fed. 674, 57 C. C. A. 428, 22 M. R. 429, affirming, 112 Fed. 373, 22 M. R. 25; *Superior Oil & Gas Co. v. Mehlin*, 25 Okla. 809, 108 Pac. 545, 138 Am. St. Rep. 942.

The presence of a surrender clause defeats the right to specific performance before the lessee has so far performed, that specific performance against itself could be decreed. *Hill Oil & Gas Co. v. White*, 53 Okla. 748, 157 Pac. 710; *Superior Oil & Gas Co. v. Mehlin*, 25 Okla. 809, 138 Am. St. Rep. 942, 108 Pac. 545; *Warner v. Page*, 59 Okla. 259, 159 Pac. 264.

The lease provided that if a well was not commenced at once, the lessee should pay \$8.75 per month during the delay; there was the usual royalty but no limit as to time. It was held that the contract contemplated immediate exploration, that the small rental was merely compensation for delay and that the terms of

the contract were too onesided for specific performance. *Federal Oil Co. v. Western Oil Co.*, *supra*.

The Court will not decree performance of a contract to assign oil leases where the contract would require continual supervision by the Court and the personal services of the parties which could not be enforced. *Snyder v. Wilder*, 84 So. 104 (La.).

Calling for Incorporation.

Specific performance of a contract to organize a company to develop an oil lease refused when the agreement was to organize a corporation and only an unincorporated company had been formed. *Kennedy v. Burns* (W. Va.) 101 S. E. 156. And it will be refused where the contract anticipates action of the Corporate Board. *Ellis v. Treat*, 236 Fed. 120, 149 C. C. A. 330.

Laches.

Unreasonable delay and notice of outstanding equities will bar specific performance. *Lowther Oil Co. v. Miller-Sibley Oil Co.*, 53 W. Va. 501, 97 Am. St. Rep. 1027, 44 S. E. 433, 22 M. R. 656. Or waiting to learn the results of prospecting for oil value. *Merrell v. Rocky Mountain Cattle Co.* (Wyo.) 181 Pac. 964.

Danger of Eviction

is an excuse for nonpayment of purchase money until the seller furnishes bond to protect against the eviction. *Jennings-Heywood Oil Synd. v. Home Oil, etc., Co.*, 113 La. 383, 37 So. 1.

Allowing Time to Complainant.

And where option holder was to obtain consent to assignment, the decree may allow time to procure the assent. *Mackey, etc., Co. v. United States Gypsum Co.*, 244 Fed. 275.

CHAPTER 53.

PARTITION.

A mining claim may be partitioned. *Hughes v. Devlin*, 23 Cal. 501, 12 M. R. 241; *Aspen M. Co. v. Rucker*, 28 Fed. 220. But not the mere right to mine and take out ore. *Smith v. Cooley*, 65 Cal. 146, 2 Pac. 880. And when between mining partners, the decree should include accounting and dissolution. *Nisbet v. Nash*, 52 Cal. 540.

An estate in the minerals, the right being severed from the surface right, is partible. *Canfield v. Ford*, 28 Barb. 336; *Smith v. Jones*, 21 Utah 270, 60 Pac. 1104.

In *Hall v. Vernon*, 47 W. Va. 295, 81 Am. St. Rep. 791, 49 L.R.A. 464, 34 S. E. 764 it was held that there could be no partition by surface lines between the joint owners of the oil and gas not owning the surface, but only by sale and division of the proceeds. The opinion learnedly presents the difficulties in the way of partition by metes and bounds. It is cited and followed in *Preston v. White*, 57 W. Va. 278, 50 S. E. 236. The same ruling was made in *Lenfers v. Hanke*, 73 Ill. 405, 24 Am. Rep. 263, 5 M. R. 67.

Partition was denied on account of the fugacious character of oil in *Watford Oil & Gas Co. v. Shipman*, 233 Ill. 9, 122 Am. St. Rep. 144, 84 N. E. 53. But in the later case of *Ziegler v. Brenne-man*, 237 Ill. 15, 86 N. E. 597, the right to partition of such lands is apparently recognized.

Oil land cannot be partitioned in kind, that is by metes and bounds. *Gulf Ref. Co. v. Hayne*, 138 La. 555, Ann. Cas. 1917D, 130, L.R.A.1916D, 1147, 70 So. 509; *Dangerfield v. Caldwell*, 151 Fed. 554, 81 C. C. A. 400.

Partition of an oil lease was denied in *Beardsley v. Kansas N. G. Co.*, 78 Kan. 571, 96 Pac. 859 on the ground that personal property was not covered by the Partition Act.

Where there is a well on the ground which partition would

give to one leaving to the other only the nonproductive part of the tract, the reason against surface partition is obvious, but where there has been no well already sunk, the fact that it may be oil territory would seem no sufficient reason to defeat partition by metes and bounds.

An agreement to secure partition of oil property should be carried out promptly on account of the incidents peculiar to such lands. *Emery v. League*, 31 Tex. Civ. App. 474, 72 S. W. 603.

The working of the mine may be enjoined pending the partition suit. *Rainey v. H. C. Frick Coke Co.*, 73 Fed. 389. The licensee of one cotenant in a mine cannot call for partition. *Boston Franklinite Co. v. Condit*, 19 N. J. Eq. 394. And a lessee is not bound by a partition to which he is not a party. *Duke v. Hague*, 107 Pa. 57.

CHAPTER 54.

MEASURE OF DAMAGES.

In Trespass Cases.

In suits to recover for oil taken by trespass, that is, the taking of oil which only the plaintiff had the right to take, the measure of damages is the same as for ore mined by trespass, depending on the circumstances; if taken by inadvertance or under *bona fide* claim of title the measure is the profit, but if taken by wilful wrong no deductions are allowed. *Central Coal, etc., Co. v. Penny*, 173 Fed. 340, 97 C. C. A. 600, reviews the items of mitigation and *Montana Co. v. St. Louis M. Co.*, 147 Fed. 897, 78 C. C. A. 33 contains instructions on this point which were affirmed. The authorities are collated in *Mining Rights*, 15th ed. 446, 685. In *Stone v. Marshall Co.*, 208 Pa. 85, 101 Am. St. Rep. 904, 65 L.R.A. 218 where natural gas had been mingled with other gas, without keeping account of it, the facts amounting to fraud, the extreme rule as in case of confusion of goods, was applied as the measure of recovery. Where the gas had been fed to a pipe as one out of 60 wells one-sixtieth of the total product carried by the line was allowed. *Great Southern Gas Co. v. Logan N. G. Co.*, 155 Fed. 114, 83 C. C. A. 574.

The measure of damages for oil taken by trespass depends upon whether taken by a wilful wrongdoer or in good faith under claim of right. In the first case it is the full value of the mineral, in the latter the cost of mining is to be deducted. The fugacious character of oil adds no qualification to this rule. *Bryson v. Crown Oil Co.*, 185 Ind. 156, 112 N. E. 1.

No deductions for willful trespass in removing coal. *North Jellico Coal Co. v. Helton*, 219 S. W. 185 (Ky.).

In trespass for oil taken the measure of damages is not the amount of oil lost to plaintiff but the depreciation in value of

his lease. The difficulty of proving such damages in such case stated. *Duffield v. Rosenzweig*, 144 Pa. 520, 23 Atl. 4.

Where oil or gas is taken without wrongful intent, defendant is entitled to deduct the cost of mining. *Campbell v. Smith*, 189 Ind. 159, 101 N. E. 89.

An ousted lessee has a right of action for damages and the amount of damages depends largely upon the question of good or bad faith in the taking. *Backer v. Penn. Pub. Co.*, 162 Fed. 627, 89 C. C. A. 419.

On an accounting in a contest between first and second lessees the defendants were allowed costs of improvements and operation before notice of the rights of the first lessee and after such date were not to be credited with such items. *Guffey v. Smith*, 237 U. S. 101, 59 L. ed. 856, 35 Sup. Ct. 526; *Loeb v. Conley*, 160 Ky. 91, Ann. Cas. 1916B 49, 169 S. W. 575.

The value of the oil in the ground, as tested by the royalty, is the measure of damages for oil taken by trespass but under claim of title in good faith. *Turner v. Seep*, 167 Fed. 646; *Midland Oil Co. v. Turner*, 179 Fed. 74, 102 C. C. A. 368.

The date of conversion and not the date of the judgment is the date at which the value of the oil is to be determined. *Russell v. Producers Oil Co.*, 146 La. 481, 83 So. 773.

Where oil is taken with full knowledge of plaintiff's title, no expense of mining can be deducted and plaintiff is entitled also to interest. *Pittsburgh & W. Va. Gas Co. v. Pentress Gas Co.* (W. Va.) 100 S. E. 296.

In *Dyke v. National Transit Co.*, 49 N. Y. Supp. 180, 22 App. Div. 360 where no expenses were allowed, the case was reversed with comments on the injustice of the ruling. The Court says: "The value of the oil as it lay in the earth is the full and true measure of the plaintiff's damages." This is eminently true, but such value unlike the value of coal or ore can only be got at, where the quantity taken is unknown, by deducting the cost from the value of the oil pumped.

Where coal or ore is taken the cubic contents of the space worked out is usually known and the value of the coal or ore removed from such space can be approximately calculated, an

incident which is obviously absent from every case of oil trespass.

Distinction between Oil and Ore.

"If oil be not utilized at the proper time it may be lost forever" by reason of others operating nearby. Not so with a stationary mineral: it remains for future development. *Bradford Oil Co. v. Blair*, 113 Pa. 83, 57 Am. Rep. 442, 4 Atl. 218.

This distinction is obvious and is mentioned incidently in *Daughetee v. Ohio Oil Co.*, 263 Ill. 518, 105 N. E. 308. On breach of covenant to mine ore or coal the damage is only the loss directly incident to the breach and the owner will get the coal or ore by future working. But where the oil has been drained, its value in a proper case should be allowed, because it has become a total loss.

Loss of Profits. Value of Lease.

Where the lessee has been ousted by the lessor, conjectural damages cannot be allowed and loss of profits must be specifically proved. *Bokoshe, etc., Coal Co. v. Bray*, 55 Okla. 446, 155 Pac. 226. The value of an oil lease may be shown by proof of the value of similar adjoining lease. *Peden Iron & Steel Co. v. Jenkins* (Tex. Civ. App.) 203 S. W. 180.

Damages for Nonproduction. Failure to Operate.

Where the lessee has breached his covenant to operate a well, the Courts agree that it is impossible to ascertain the exact amount of damages, but they widely disagree as to what is the proper measure by which to approximate the damages. The case of *Daughetee v. Ohio Oil Co.*, 151 Ill. App. 102, is the only one which gives a practical ruling with reasonable clearness. The Trial Court instructed the jury to find the quantity of oil which the lessee did produce and subtract from it the quantity which he should have produced, and give to plaintiff lessor his royalty, one eighth of the difference. This was approved in the decision affirming the lower Court (263 Ill. 518, 105 N. E. 308), with the

observation that the fact that the damage could not be ascertained with exactness was no reason for denying any relief.

The Court further held that the fact that the oil still remained in the ground, the property of the lessor, was no defense to the action.

Bradford Oil Co. v. Blair, 113 Pa. 83, 57 Am. Rep. 442, 4 Atl. 218, was a similar case. A lessee was bound to sink protection wells which he failed to sink. The Trial Court gave an instruction that the jury should ascertain "how much more oil he ought to have received than he actually did receive" then to ascertain its value, and deduct the cost of production which would seem to cover the entire profit, instead of the lessors royalty on the production. This is probably qualified by other expressions in the instructions. The report of the case below is confusing and the Review Court added nothing to relieve the obscurity.

In *McClay v. Western Pa. Gas Co.*, 201 Pa. 197, 50 Atl. 978, 21 M. R. 760, the sublessee was bound either to work the well or to put it in shape for the lessee to work. He did neither. The measure of damages was held to be the full value of the royalty which the well should have produced during the entire term. This royalty was to be fixed by the "probable production."

In *Indiana Oil, Gas & Dev. Co. v. McCrory*, 42 Okla. 136, 140 Pac. 610, \$8,000 damages were given apparently for failure to produce what the well properly managed should have brought. The Court held that the attempt to fix the damages was a mere guess, the land being spotted and every well of the many sunk on the tract, differing from the others in its capacity.

Pleading.

Where the right to the oil depended on the construction of a deed, which was construed against the defendant, it was held for the full price received for the oil sold, without deduction of expenses because the right to deduction was not pleaded. *Gladys City Oil, etc., Co. v. Right of Way Oil Co.* (Tex. Civ. App.) 137 S. W. 171. This case seems to discard the rule both of the common law and of the so-called reform Codes, which do not require evidence to be pleaded.

Net Profits Allowed.

Coal mine allowed to recover net profits as damages for failure to deliver electric power. *Coal District Power Co. v. Katy Coal Co.* (Ark.) 217 S. W. 449.

Act of Court.

Where oil wells have been seized by a bankruptcy Court, lessee is not liable in damages, while performance prevented by the Court. *Munsey v. Marnet Oil, etc., Co.* (Tex. Civ. App.) 199 S. W. 686.

Damages too Remote.

Possible danger of explosion from gas is an item too remote to be considered in cases of alleged danger to the surface crops or to a coal vein through which the well passes. *Manufacturers' Natural Gas Co., etc. v. Leslie* (Ind. App.) 51 N. E. 510; *Rend v. Venture Oil Co.*, 48 Fed. 248.

For Loss of Lease.

Lessor was to receive one half of what the lease sold for, if it was assigned. It was in bulk with much other property. The Court held that it was not a case of confusion of goods and that the plaintiff must show what his particular lease, one of several was worth. *Moherman v. Anthony*, 103 Kan. 500, 175 Pac. 676.

Where a defendant is liable for allowing leases to be lost by default, the measure of damages was treated as the value of the leases at the time the right of action accrued and experts were allowed to testify to the acreage value. The witnesses varied widely but the Court said—"we know of no better method of proving the value of property of the character here involved." *Millan v. Bartlett*, 78 W. Va. 367, 89 S. E. 711. In *Duffield v. Rosenzweig*, 144 Pa. 520, 23 Atl. 4, the difference in value before and after the injury was committed was taken as the measure of damages. This was an action against the lessor where the lessor had wrongfully given a second lease. Estimates of quantity of oil lost, that is, which might have been lifted under the lease,

were discarded as mere guesses. *Duffield v. Rosenzweig*, 144 Pa. 520, 23 Atl. 4.

Removal of Casing. Drilling Contracts.

The defendants breached that clause of the lease which forbade removing the casing from the well. The well was 3600 ft. deep and had found no oil. The plaintiff claimed that he was entitled to recover the cost of replacing the casing (which would have been as much as the cost of a new well) and would have been of no value if done. The Court ruled that the barren condition of the well could not be overlooked and that the plaintiff could only recover the value of the casing when removed from the well. *Johnson v. Henkel*, 29 Cal. App. 78, 154 Pac. 487. The Court further held that the Statute compelling owners to withdraw the casing from abandoned wells had no application to the facts of the case at bar.

On breach of a drilling contract plaintiff is entitled to recover the rent of a string of tools kept idle as a direct consequence of the breach. *Terrell Co. v. Davis*, 188 Pac. 676 (Okla.).

Pipe Line.

The measure of damages for the destruction of a pipe line includes the value of the pipe destroyed and the value of the oil lost by reason of plaintiff's inability to market it and the fall in the market value. But that the plaintiff was prevented for a certain period from delivering oil to its customers would not necessarily sustain the conclusion that so much oil was lost or that it was damaged to the extent of its value. *Brookshire Oil Co. v. Casmalia, etc., Co.*, 156 Cal. 211, 103 Pac. 927.

Mesne Profits after Execution Sale.

In *Dobbins v. Economic Gas Co.* 189 Pac. 1073, it was held that the purchaser at foreclosure sale on a mortgage given by a public utility gas company was entitled to the mesne profits subsequent to the sale. But that the purchaser was not entitled to a writ of assistance to cover an auxiliary generating plant

used by the company. *Lowe v. Los Angeles Suburban Gas Co.*
189 Pac. 1084 (Cal.).

Recognizing Wrong Lessor.

Where the lessees paid the royalty to the wrong landlord on account of a litigated boundary dispute and had mingled the oil with other oil into a pipe line, they were held to account for the oil produced, found by approximation, and not for the whole amount turned into the pipe line. *Russell v. Producers Oil Co.*, 146 La. 481, 83 So. 773.

CHAPTER 55.

INSURANCE.

As soon as the use of oil for heat and light became common, the insurance companies in their forms of policies began to restrict its use or storage.

The words "refined coal or earth oils" cover kerosene. The opinion recites its history—but under the facts of the case, it was held that its use did not avoid the policy. *Bennett v. North British Ins. Co.*, 81 N. Y. 273, 37 Am. Rep. 501, 8 Daly 471.

In *Buchanan v. Exchange Fire Ins. Co.*, 61 N. Y. 26 it was held that "rock and earth oils" included kerosene. But its prohibition may be nullified by the lighting clause. The opinion recited that it was proved that kerosene is not properly classified as an inflammable liquid. In the Mark case the Court says: Burning fluid cannot mean "every fluid that will burn, whale oil will burn." *Putnam v. Commonwealth Ins. Co.*, 4 Fed. 753, 18 Blatchf. 368.

It might be observed that the word inflammable should be cautiously construed. As a matter of fact almost every object in the vegetable world and every creation of man's labor, not strictly metallic, is combustible and more or less inflammable.

Permission to use gasoline, altho prohibited in terms, may be inferred from the general scope of the policy and the necessity for its use in the gasoline stove which was one of the items insured. *American Central Ins. Co. v. Green*, 16 Tex. Civ. App. 531, 41 S. W. 74. Naphtha may be used for lighting purposes altho its storage is prohibited. *Putnam v. Commonwealth Ins. Co.*, 4 Fed. 753, 18 Blatchf. 368.

Loss by fire following explosion may be covered altho loss from explosion is excluded. *German Am. Ins. Co. v. Hyman*, 42 Colo. 156, 16 L.R.A.(N.S.) 77, 94 Pac. 27.

Where an explosion follows a fire the explosion is only an incident to the fire. *Western Ins. Co. v. Skass*, 64 Colo. 342.

Where the explosion was caused by the fire and not the fire by the explosion the company is liable for the whole loss. *Possini v. St. Paul Fire Ins. Co.* 188 Pac. 564.

Keeping a Ford car with some gasoline in it was held to defeat an insurance policy in *Morgan v. Germania Fire Ins. Co.*, 104 Kan. 383, 179 Pac. 330, 3 A.L.R. 794. The note to the A.L.R. gives the cases which hold to the contrary.

CHAPTER 56.

INDIANS.

The main importance of this subject is confined to Oklahoma but the rights of the Indians in mineral lands are referred to in innumerable Acts of Congress covering special reservations most of which have become obsolete by purchase of the lands. Very little oil value has been shown on the reservations outside of Oklahoma. In 47 L. D. 261, are printed regulations and forms of mining leases on unallotted land on Indian reservations in Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Washington and Wyoming. See Comp. L. secs. 4221A-4221S.

The Congressional Acts below mentioned are mere skeletons giving the power to the Secretary of the Interior to represent the Indian mineral lands in Oklahoma and the regulations from his office promulgated by circulars are practically the law which controls.

Under several Acts of Congress the Indian allottees in Oklahoma are protected in their oil and gas interests, by placing them under regulations of the Interior Department.

Osages.

The Act of June 28, 1906 (34 Stat. L. 539, 543) refers to the Osage Indians and under it regulations were promulgated by circulars of August 26, 1915, May 22, 1916, July 8, 1916 and May 13, 1919.

It provides for leases for any term deemed advisable by the Secretary and the rules fix such term at ten years.

In the Osage circulars of May 13, 1919, a schedule of excessive fines is adopted which increases departmental supervision to its utmost extreme.

Tribal Lands.

The Act of February 28, 1891 (26 Stat. L. 795) provides for ten year leases on tribal lands, and under it regulations were issued July 12, 1909, reprinted June 28, 1916.

The Act of March 3, 1909 (35 Stat. L. 781, 783) refers to land allotted to Indians in severalty (excepting the five civilized tribes and the Osages), under which a regulation circular was issued September 3, 1912.

The various regulations issued under the above Acts provide for all the usual contingencies of oil and gas operations, and forms of leases are printed with them. The general purport of these regulations and the leases is to give absolute power to the department to cancel the lease for any violation of its provisions and they reserve the right of superintendence of the lease.

Moore v. Sawyer, 167 Fed. 826 construes the Act of June 1902 (32 Stats. 500) and the Act of April 21, 1904, (33 Stats. 204) as to restrictions on leases by allottees of Indians of the Five Civilized Tribes.

Under Act of April 26, 1906 and May 27, 1908, the exclusive control of the mineral rents from restricted lands of full blood tribal Indians of the five tribes is vested in the Secretary of the Interior, and they cannot be conveyed by the allottee. *United States v. Hinkle*, 261 Fed. 518; *Hoyt v. Fixico* (Okla.) 175 Pac. 517. But the approval of an oil and gas lease by the Secretary of the Interior removes the restrictions. *Parker v. Riley*, 243 Fed. 42, 155 C. C. A. 572. And such approval relates back to the date of the lease. *Scioto Oil Co. v. O'Hern* (Okla.) 169 Pac. 483.

The decisions generally uphold the action of the Secretary of the Interior unless his rulings are clearly arbitrary. *Anicker v. Gunsberg*, 246 U. S. 110, 62 L. ed. 603, 38 Sup. Ct. 228; *United States v. Lane*, 258 Fed. 520.

In *United States v. Moore*, 261 Fed. 523 it was held that the United States could not recover payments already made, altho the assignment under which they were made might have been set aside.

A contract in violation of the restrictions not approved by the Secretary of the Interior, will not be enforced. The restrictions

are a matter of government policy and no rule of property will avail to defeat them. *Wah-Hrah-lum-Pah v. To-wah-e-He*, 188 Pac. 106 (Okla.).

Congress has exclusive power to control the alienation of land allotted to or inherited by the five civilized tribes of Indians. *Canfield v. Jack*, 188 Pac. 1040 (Okla.).

The substance of the above line of decisions is that the Indian is considered as a ward of the government which exercises its guardianship through the Interior Department and that the Acts of Congress and the regulations under them will be liberally construed in favor of a supposedly helpless and dependent party. There should be no complaint against this policy. The ward should be protected by every construction in its favor but concession to that effect does not imply concession to regulations which impose burdens in the shape of fines and supervision against and over the oil lessees with no corresponding benefit to the Indian intended to be protected.

The foreclosure of a mortgage on an Indian oil lease is no invasion of the powers of the Secretary of the Interior for the protection of the Indians. *McKee v. Interstate Oil & Gas Co.* 188 Pac. 109 (Okla.).

The Form of Lease

providing minutely for details of work, superintendence, notices, installments of royalty and almost impracticable conditions as to separation of oil and gas if both are found, is printed with the regulations.

To comply literally with its terms is a physical impossibility but the lease provides that any failure to comply with any of its provisions or with the regulations or noncompliance with the orders of the superintendent subjects the lease to forfeiture or to fine "not exceeding \$500 per day for each and every day" of the default.

Such a lease does not come within the definition of a contract—an agreement between two persons—and is merely the permission of the department to the lessee to work at its pleasure. None would deny that the Indians ought to be protected, nor object to drastic regulations, nor is it assumed that the department would

arbitrarily exercise its authority, but if literally construed and enforced the lessee is practically beyond the protection of the law.

It is the duty of the United States to protect the Indians' leased oil lands and a bill charging conspiracy to defraud them, was sustained in *United States v. Apple*, 262 Fed. 200.

CHAPTER 57.

COAL LAND.

The settled policy of the government has long been to consider mineral lands including coal under special legislation. *United States v. Sweet*, 245 U. S. 563, 62 L. ed. 473, 38 Sup. Ct. 193. The original coal Act was passed in 1873 allowing entries of from 160 to 640 acres upon proof of improvements. (R. S. Sees. 2347-2352) at a minimum price of \$10 and \$20 per acre according to the distance from railroad. It is printed and the decisions under it cited in *Mining Rights*, 15th ed. p. 655.

Then came the Acts of 1909 and 1910 (33 Stat. L. 844, 36 Stat. L. 583) allowing agricultural claims to be entered reserving the coal to the United States: and the Nevada Homestead Act of Oct. 22, 1919, St. L. allowing separate entries of surface and coal. They are now covered by the oil leasing Act of 1920.

Appraisal of Price.

We mention this original Act with reference to a construction placed by the department on the words "not less than" preceding the \$10 and \$20 prices.

For many years coal lands were legitimately and as a matter of course entered at these prices but later the land office, stressing the words "not less than," arbitrarily held that the price of coal lands should be fixed at any valuation the department chose to put upon them. Not only could they appraise the land at a higher price but could reappraise and enlarge the price. On an application by *Charles S. Thomas*, 47 L. D. 43, the price was raised from \$20 to \$150 per acre.

This construction at once destroyed all inducement to prospect for coal and changed the ancient policy of the government which had been to deal equally with all citizens to one of departmental

favor allowing speculators to take the benefit of the prospectors discovery.

Knowledge of Coal Value.

In a suit to set aside an agricultural patent because issued on coal land, it was held that the mere possibility of underlying coal was not enough to make good such contention. *United States v. Porter Fuel Co.*, 247 Fed. 769. For other cases of attack on patents on the same ground, see *Mining Rights*, 15th ed. p. 657.

One who contests and defeats the claim of the State to land on account of its coal value gains no right to make entry of the same. *Utah v. Olson*, 47 L. D. 58.

There is a distinction between the mere discovery of coal and the "development" on the mine required by the Alaska coal land Act of April 28, 1904. *United States v. Lane* (U. S.) 40 Sup. Ct. Rep. 33.

CHAPTER 58.

OIL SHALE.

Oil shale was clearly taken up as a placer claim before the leasing Act of 1920, and for future locations is covered by that act.

We find no cases on oil shale locations but shale grease and oil shales are mentioned incidentally as insufficient proof of discovery in oil well litigation. *Dean v. Omaha-Wyoming Oil Co.*, 21 Wyo. 133, 128 Pac. 881, 129 Pac. 1023; *Southwestern Oil Co. v. Atlantic Co.*, 39 L. D. 335.

The shale in these cases had no workable value and was only referred to, in attempt to save the point of discovery.

There are immense deposits of this valuable mineral in Colorado, Wyoming, Utah and Nevada, and it is looked to for vast supply of oil and its innumerable by-products in future years when the supply of fluid oil may have become practically exhausted.

To Be Located as Placers.

In *United States v. Ohio Oil Co.*, 240 Fed. 996, Riner, J., says: the term placer claim "means ground that includes valuable deposits not in place, while by the term, veins or lodes, as used in the statute are meant lines or aggregations of mineral imbedded in quartz or other rock in place."

A shale deposit is in place and it is imbedded in rock. To that extent it comes within the above definition. But its mineral value is nonmetallic, and of a class which has been generally located as placer. In *Webb v. American Asphalthum Co.*, 157 Fed. 203, 84 C. C. A. 651. Asphalt which is nonmetallic, because found in the shape of a longitudinal injection, was held locatable as a lode. Many other nonmetallic minerals, such as marble, sulphur, slate, kaolin have gone to patent as placers

with the approval of the land department. An oil shale claim meets the description of a blanket lode claim, but its mineral is of a class which has almost uniformly been patented as a placer. See Mining Rights, 15th ed. 259.

But these distinctions are of little value, because it seems to be clear under the language of the Oil Placer Act, that they should be located as placers. The Act of 1897 says, "That any person may enter and obtain patent to land, containing petroleum or other mineral oils and chiefly valuable therefor." 29 Stat. L. 526. The wording of the Act concerning annual labor on oils placers bears out this construction. Comp. L. 1911 p. 611, 32 Stat. L. 825.

It is true that oil shale claims as such, were not generally known when these Acts were passed but their language is as applicable to oil bearing rock as it is to liquid oil and the almost universal practice has been in accordance with this construction to locate and record them as placers.

For a recent ruling that oil shale claims could be located as placers, and may be patented as such, see Chapter 65, Analysis of Sec. 21.

CHAPTER 59.

LOCATION OF OIL PLACER CLAIMS.

Congressional Legislation.

Oil claims began to be located on the public domain as soon as the Act of Congress of 1870 was passed which declared placers open to discovery, location and patent, and have ever since been entered and patented the same as any other placer claim.

There was no special legislation concerning them until there came in 1896 a sporadic decision by the Land Office holding that oil was not a mineral and therefore oil claims were not locatable. *Union Oil Co.*, 23 L. D. 222. This decision was shortly after overruled by the Secretary of the Interior (25 L. D. 351) but to remove all controversy the Act of 1897 was passed which declared in terms that oil territory could be taken up and patented as placers.

Further legislation special to oil claims was the Act of 1911 which allowed the annual labor to be done on one of a group of not exceeding five claims. *Consolidated Mut. Oil Co. v. United States*, 245 Fed. 521, 157 C. C. A. 633.

Up to the passage of the Oil Leasing Act of 1920 there was nothing to differentiate oil land from other placer land barring the annual labor Act just mentioned and the withdrawal orders and Acts, which began in 1909.

These withdrawal orders and Acts, while not always mentioning oil in terms, were intended to affect oil territory especially and were the result of a new policy of the government growing out of the fact that the use of oil for power and locomotion, had produced such a vast and unprecedented demand for it that there was danger that the world's supply would be shortly exhausted and that therefore the government should interfere to conserve the oil for the ultimate future.

And behind all this was that human covetousness which suggested that the government should become a partner with the prospector and take a share of his profits.

These two inducing causes brought about the Oil Act of 1920 which is intended to cover all future acquisitions of Oil Rights.

Premising, of course, that where oil or gas is discovered on lands patented as mineral or in any other form, the patents containing no special reservation and none being implied, it belongs to the owner of the fee simple title; we propose to consider the rights in oil and gas on the public domain under Legislation prior to the Oil Leasing Act and later, such rights as controlled by the provisions of that Act approved and in force from February 25, 1920.

Federal Requirements.

The location of the claim is governed by the terms of Secs. 2320 and 2324 of the U. S. R. S. that for all sorts of claims, lode or placer, there must be a discovery and that the location must be distinctly marked on the ground so that its boundaries can be readily traced. These are the only two federal requirements.

State Requirements.

All other details are left to state or district regulation. District rules had practically gone into oblivion before oil placers began to be taken up. But practically every Western Mining State has more or less minute regulations as to details of location which must be followed. Discarding specific points (which will be found in the local statutes for each of the mining states printed in chap. 87) their general requirements are, a location notice, staking and the location certificate. In general terms oil placers are staked and recorded the same as other placers. *Wolfskill v. Smith*, 5 Cal. App. 175, 89 Pac. 1001.

Incidents Peculiar to Oil Discovery.

A discovery is required on any form of mineral claim but the discovery in the case of oil on account of its deep subterranean

deposition is a fact seldom possible to show until after heavy expenditure and the drilling to hundreds or thousands of feet.

All other minerals show on the surface, at least to the extent of disclosing the gangue or mineral bearing rock or float from the same.

Or if not disclosed on the surface, the removal of few feet of debris or overburden will disclose the apex of a lode or the outcrop of a mineral bed while in the very nature of things the oil must be sought at great depths. If it ever appeared at the surface it would have disappeared in the air or in the ocean in the long geological ages which have elapsed since it first came into physical existence as a fluid mineral, evolved at unknown depths from sources also unknown except as testified to by experts whose knowledge is predicated on uncertain facts and their inferences rarely satisfactory, to those who invest on their assertions.

As is everywhere conceded, the existence of oil cannot as a rule be more than guessed at from surface indications. Surface indications in the case of lodes consist usually of float, metallic stains and other incidents visible to the naked eye. But in the case of oil the whole geology and topography of the country must be studied by competent persons having knowledge of like formations in distant and distinct localities and even then no honest expert can guaranty success. Some one must risk the money for the expense of drilling with the possibility that every dollar spent will be an absolute loss.

If, however, the prognostications are borne out by finding an actual flow of oil the investor receives his reward and value is given to all adjoining tracts for considerable distances on the assumption that such adjoining tracts cover the same deposit.

It is matter of common knowledge that oil is not to be found without drilling a well. *Consolidated Mut. Oil Co. v. United States*, 245 Fed. 525, 157 C. C. A. 633.

The fact that oil and gas unlike the metal minerals do not disclose themselves at or near the surface, was not recognized in any of the congressional legislation, before the Leasing Act of 1920.

In New Mexico there is a statute allowing oil and gas claimants

to the end of the calendar year to make their discovery and Washington exempts them from the discovery work required on other placers but if literal discovery is required by the Congressional Act it is doubtful whether any State Statute could directly or indirectly dispense with it.

That this distinction should have been required from the out-start is self-evident but we have to take the Statutes as we find them.

The tapping of oil or gas by the drill in commercial quantity is of course a legal discovery beyond question but the tapping of oil or gas in noncommercial quantity has led to divergent decisions.

Decisions on Oil Discoveries.

In the case of the *Butte Oil Company*, 40 L. D. 602, a flow of gas, had been tapped in a 1400 foot well. This flow of gas was slight and had not been utilized. We treat the tapping of gas the same as if it had been oil, as undoubtedly a discovery of gas is equivalent to the discovery of oil in like quantities and under like circumstances. But the Secretary treated such discovery of nonutilized gas as not a legal discovery. It is of interest chiefly because it digests all the decisions up to its date in 1912 where oil indications had been held insufficient discoveries. This well had been sunk on ground afterwards created in to the Glacier National Park and the effect of the decision was to confiscate the claim to the government. A similar small showing of gas was held no valid discovery in *United States v. McCutchen*, 238 Fed. 575.

Seepage.

The Butte Company case also holds that seepage of oil on the surface is not an oil discovery and on this point the decisions seem to be uniform. It cannot be successfully maintained that seepage is anything more than an indication that oil may exist or did once exist on the claim or in the neighborhood. In fact such seepage is not even an inducement to bore as it seems to indicate, not the presence of oil of present value, but is a remi-

niscence of oil that once existed but has become evaporated or otherwise dissipated. *Nevada Sierra Oil Co. v. Home Oil Co.*, 98 Fed. 673, 20 M. R. 283; *Olive, etc., Co. v. Olmstead*, 103 Fed. 568; *Miller v. Chrisman*, 140 Cal. 440, 98 Am. St. Rep. 63, 73 Pac. 1083; *Bay v. Oklahoma So. Gas, Oil & Min. Co.*, 13 Okla. 425, 73 Pac. 936; *Dean v. Omaha-Wyoming Oil Co.*, 21 Wyo. 133, 128 Pac. 881, 129 Pac. 1023; *Weed v. Snook*, 144 Cal. 439, 77 Pac. 1023.

Shale or Sand.

The discovery of a stratum of oil shale or oil sand has been treated as no discovery. *New England & Coalinga Oil Co. v. Congdon*, 152 Cal. 211, 92 Pac. 180; *Southwestern Oil Co. v. Atlantic Co.*, 39 L. D. 335. Shale grease is not good discovery. *Dean v. Omaha-Wyoming Oil Co.*, 21 Wyo. 133, 128 Pac. 881, 129 Pac. 1023. But these decisions have no bearing on cases where shale of value in itself for mining purposes has been discovered.

In *United States v. Ohio Oil Co.*, 240 Fed. 996 oil had been discovered in two drill holes at 35 and 57 feet. It does not seem to have been pumped or used. But the sworn fact that oil was discovered was not overcome by the testimony of a negative character by detectives. The Court held that the question of discovery was one of fact and applied the same test used in many lode cases that it was not necessary that the metal in one case, the oil in the other, should be of commercial value at the out-start, if it was enough to encourage and justify further exploration. And the Court refused to follow the severe test in *Bay v. Oklahoma Co.* above cited where the land to be mineral (under a local Act) was required to be "chiefly valuable" for mineral.

Discovery on Group Claims.

A discovery of oil on one of a group of four contiguous claims. is of no effect to operate as a discovery on the other claims. *United States v. Stockton Midway Co.*, 240 Fed. 1006. This as an abstract proposition, is no doubt true; every claim must ultimately have a discovery of its own before it can be validly located

or patented, but the point as it arises under the Pickett Act is not so clear, and *United States v. Ohio Oil Co.*, 240 Fed. 996, does not agree with this citation.

On Boundary Line.

In *Phillips v. Brill*, 17 Wyo. 26, 95 Pac. 856 a well had been sunk and struck oil on the boundary line between two claims. The Court ruled that it was a good discovery for at least one of the claims, to whichever one the owners chose to apply the discovery, but did not decide whether it was a good discovery on both claims. The reason for holding that two lode claims cannot be recorded on one discovery shaft does not apply with the same force to an oil placer.

Staking and Record before Discovery.

The fact that, as a rule, oil is not discovered when the prospector first takes possession, leads to an inversion in the procession of the incidents of location.

Discovery on a lode claim or on a gold placer is usually the first step and the first inducement to other steps to wit: the notice, the staking and the recording. But almost all oil claims are noticed, staked and recorded before discovery. This has led to many controversies between claims which had notice, stakes and record but neither of them a discovery.

This usage of staking before discovery is recognized as legal as a matter almost of necessity. *United States v. Thirty-two Oil Co.*, 242 Fed. 730. The order of the incidents of discovery and location is not material. *Dean v. Omaha-Wyoming Oil Co.*, 21 Wyo. 133, 128 Pac. 881, 129 Pac. 1023. A discovery after location will relate back and perfect the title. *Weed v. Snook*, 144 Cal. 439, 77 Pac. 1023.

The Proof of Discovery

will vary according to the nature of the mineral. Some mineral values show themselves to the eye, in other instances only an assay will demonstrate the presence or absence of value. Oil discoveries are classed by themselves, surface indications being al-

most invariably absent, and where there is proof of mineral value, as a rule, it does not need to be paying value at the out-start.

And there are several decisions that proof of discovery after the lapse of years, may be a matter of practical difficulty, if not impossible, so that it ought to be presumed. *Ralph v. Cole*, 249 Fed. 81; *Harris v. Equator Co.*, 8 Fed. 863, 3 McCrary 14, 12 M. R. 178; *Vogel v. Warsing*, 146 Fed. 949, 77 C. C. A. 199; *Cheeseman v. Hart*, 42 Fed. 98, 16 M. R. 263; *Cheeseman v. Shreeve*, 40 Fed. 787, 17 M. R. 260.

Proof of discovery varies with the mineral formation of the country: slight evidence and low assays may be enough. *United States v. Safe Inv., etc., Co.*, 258 Fed. 872.

Instances.

The fact of sluicing and taking out some gold is proof of discovery of the value of the claim as a placer. *Batt v. Stedman*, 36 Cal. App. 608, 173 Pac. 99. *Cole v. Ralph* (U. S.) 40 Sup. Ct. Rep. 321.

In an eminent domain case against a mining claim, evidence was allowed of mineral discovery after suit commenced. *Tyson Creek R. Co. v. Empire Mill Co.*, 31 Idaho 580, 174 Pac. 1004.

Surface openings showing colors enough to indicate pay at bedrock, were held a good discovery in *Lange v. Robinson*, 148 Fed. 799, 79 C. C. A. 1.

But the discovery of a few colors of gold is not enough to sustain a mining location against a prior agricultural entry. *Meyers v. Pratt*, 255 Fed. 765. In almost every gravel deposit in the Mining States, wandering colors of gold may be found by panning which indicate no substantial value.

A placer discovery must be of some form of valuable mineral deposit one such being shown by colors of gold. *Cole v. Ralph*, 40 Sup. Ct. Rep. 321.

The holding by the Land Office, that a discovery must show such a disclosure of mineral as would justify further development into a paying mine, upheld. *Cameron v. U. S.* 40 Sup. Ct. Rep. 410, affirming 250 Fed. 943.

Protection of Possession before Discovery.

The general doctrine is that: The prospector who has no discovery is entitled to protection of his possession as against another having no better right. *Consolidated Mut. Oil Co. v. United States*, 245 Fed. 525, 157 C. C. A. 633; *McKenzie v. Moore* (Ariz.) 176 Pac. 568.

The one in possession engaged in building derrick and preparing to sink will be protected against a later locator who also has made no discovery.

Oil was discovered by plaintiff on an 80 acre tract adjoining defendants claim which had no discovery, although defendant was getting ready to sink; held that the first-mentioned claim could not use its discovery to enlarge its record and take in the defendant's claim. *Weed v. Snook*, 144 Cal. 439, 77 Pac. 1023. A very similar case with the same holding is *Phillips v. Brill*, 17 Wyo. 26, 95 Pac. 856.

The rights of a prospector seeking diligently to make a discovery will be protected and his possession is good against a forcible or clandestine entry. *Cole v. Ralph*, 40 Sup. Ct. Rep. 321, 322.

LOCATION BEFORE DISCOVERY

Defendant staked his oil placer in 1906, built a cabin and expended more than the annual labor law required, but had not begun to drill and of course had no discovery. Plaintiff entered the land as a homestead in 1907. The Court held as to annual labor that it was not required on a nonperfected location, that such expenditure counted for naught and that the defendant had no title as against the homestead. *McLemore v. Express Oil Co.*, 158 Cal. 559, 139 Am. St. Rep. 147, 112 Pac. 59.

In *New England & Coalinga Oil Co. v. Congdon*, 152 Cal. 211, 92 Pac. 180, the plaintiff had a like array of facts, neither sinking nor attempting to sink, and it was held that he had no status on which to claim the right of possession.

Digging a hole for a drilling machine which did not get to the ground for nearly a year and watching the land to keep off jumpers does not amount to such possession as will be protected

as against another who drills and discovers gas. *Whiting v. Straup*, 17 Wyo. 1, 95 Pac. 849, 129 Am. St. Rep. 1093

Borgwardt v. McKittrick Oil Co., 164 Cal. 651, 130 Pac. 417, a case where plaintiffs made good their proof of discovery on a located quarter section—decides several points on the class of claims where discovery is discussed. It holds that pumping is not necessary to follow the finding of oil. On the other hand, it holds that watching the claim is not possession and trying to raise money is no excuse for the want of actual work and that only diligent prosecution of work entitles the claim to legal protection in the absence of discovery. In this case a deep well was sunk and found oil, but later the well was drowned by a flow of artesian water.

There may be possession without the owner being actually on the ground. The opinion cites many cases on what constitutes possession, holding it to be a question of fact, unless the facts are not in dispute, when it becomes a question of law, and reviews the incidents which amount to proof of possession.

The rights of a party in lawful possession of a claim as against all except the United States are as good as if he held title in fee, *Johnson v. Hinkel*, 29 Cal. App. 78, 154 Pac. 487.

Possession without Valid Location.

Where there is no valid location there can be no right of possession under it. *Nelson v. Smith*, 42 Nev. 302, 176 Pac. 261, 178 Pac. 625. This was a contest between lodes and is undoubtedly correct as a general proposition as it cites and follows *Belk v. Meagher*, 104 U. S. 279, 26 L. ed. 735, 1 M. R. 510, but it is qualified in its application to oil placers under the above citations.

Location Notice.

This notice is posted at the point of discovery or at some conspicuous place on the claim and usually contains the name of the placer, the date of posting, the number of feet in each direction claimed, or the number of acres with the names of the locators.

It has been a universal custom since the days of the first mining districts in California and is now everywhere recognized by statute. It is supposed in theory to follow discovery, but in the case of oil claims that rarely occurs and whether before or after discovery is not material.

This Location Notice, one of the incidents of location, is not the same as the location certificate, except that in a few States the location certificate, that is, the record title, is by Statute made a copy or duplicate of the posted notice. But the terms location notice and location certificate are often confused.

Knowledge Equivalent to Notice.

Unequivocal possession of the claim is notice of the rights of the locators and that they never posted notice of location is immaterial. *United States v. Rock Oil Co.*, 257 Fed. 331; *Butte, etc., Co. v. Clark-Montana Co.*, 249 U. S. 12, 63 L. ed. —, 39 Sup. Ct. Rep. 231. Notice altho defective is sufficient as to one who has actual knowledge of the prior location. *Thompson v. Underwood* (Ark.) 211 S. W. 164. See page 231.

The citations under this head, especially *The Butte Co.*, case seem to set aside all necessity for posting notice where the hostile parties have actual knowledge of the presence of the prior claimants

The Record.

Within the time allowed by the Statute of the particular State which is usually from thirty to ninety days a location certificate must be filed in the office of the county recorder.

This paper must give a description of the claim either by governmental subdivisions or by metes and bounds sufficient to identify it so that from the information contained in the location certificate it can be found on the ground. *Gamer v. Glenn*, 8 Mont. 371, 2 L.R.A. 813, 20 Pac. 654; *Dillon v. Bayliss*, 11 Mont. 171, 27 Pac. 725; *Londonderry Mining Co. v. United Gold Mines Co.*, 38 Colo. 480, 88 Pac. 455.

It contains of course the name of the claim, its size in acres or

by length and width and must give the date of discovery and the names of the locators.

It should be signed by the locators but does not need to be acknowledged or verified except where so required by the law of the particular State.

None of the States make any distinction between the record of an oil or gas claim and the record of any other kind of placer claim except New Mexico and Washington. The Specific requirements of each State are printed and a form is given in chap. 87.

This location certificate is not the same as the location notice posted on the claim, except in Arizona, California, Idaho, New Mexico and Washington which make the recorded location certificate to consist of a copy or duplicate of the notice posted on the claim.

Failure to record location certificate does not work a forfeiture under the California Statute and the claim is good against any subsequent location. *Dripps v. Allison's Mines Co.* (Cal. App.) 187 Pac. 448.

A Misdescription

in the location certificate designating the number of feet claimed in each direction from the discovery shaft, is immaterial. *Courtney v. Ward* (Colo.) 187 Pac. 517.

The omission of the record to tie the claim to a natural object or permanent monument, does not make the location certificate void. It is amendable and a subsequent record correcting the omission makes it valid. *Nylund v. Ward* (Colo.) 187 Pac. 514, overruling *Frisholm v. Fitzgerald*, 25 Colo. 290, 53 Pac. 1109. *Courtney v. Ward* (Colo.) 187 Pac. 517, follows the *Nylund case*, both holding that the amended record relates back to the original.

The cases where a defective record has been followed by a second record are cited in *Mining Rights*, 15 Ed. 164. There is irreconcilable discrepancy among them, but the opinion in the last citation above printed, *Nylund v. Ward*, does not shake our position that a record with no tie at all, or otherwise nonconforming to the mandatory congressional requirements, cannot by any

subsequent record be cured so as to cut out intervening valid locators.

Legal Subdivisions.

On surveyed land, oil claims are usually taken up as quarter-sections or as subdivisions of quarter-sections. And the land office does not require staking of any subdivision. *Reins v. Murray*, 22 L. D. 409. So that a subdivision placer not staked would be accepted in proceedings to obtain patent, but might be held void by the Court in the adverse claim suit.

Whatever subdivision is taken would of course be rectangular in form but where a gulch or other topographical difficulty occurs the department allows a departure from this rule. *Mitchell v. Hutchinson*, 142 Cal. 404, 76 Pac. 55; *Wood Placer M. Co. in re*, 32 L. D. 363, 401.

The same rule as to the conformity to the system of United States surveys applies to both surveyed and unsurveyed ground. *Wood Placer M. Co. in re, supra*.

The requirement of the Mining Act, that placer locations should conform to legal subdivisions, does not compel the locator to disregard older interfering claims which render such conformity impracticable. *Dripps v. Allison's Mines Co.* (Cal. App.) 187 Pac. 448.

Staking.

Ever since the Act of May 10, 1872, staking has been an essential part of the location. It is usually complied with by a substantial stake or stone monument at each corner and at any extra angle in the claim, but extra angles in a placer location are not frequent. For the details of staking, see Statutory Requirements and Mining Rights 15th ed. 50. For staking of legal subdivisions, see next paragraph.

New Staking Required.

If the located ground is a government subdivision the government stakes are not sufficient. They are not often found on the ground and even if found the government does not subdivide

its quarter-sections. Consequently only the section and quarter-section corners could be found. The decisions on this point are now practically uniform that there must be a new staking. *Saxton v. Perry*, 47 Colo. 263, 107 Pac. 281. *Worthen v. Sidway*, 72 Ark. 215, 79 S. W. 777. But the latest California case *Kem Oil Co. v. Crawford*, 143 Cal. 298, 3 L.R.A.(N.S.) 993, 76 Pac. 1111, holds to the contrary and overrules *White v. Lee*, 78 Cal. 593, 12 Am. St. Rep. 115, 21 Pac. 363.

Exclusions.

Where a subdivision is claimed it need not except parcels already patented, the land office undertaking to make the proper exclusions. *Rialto No. 2 Claim, in re*, 34 L. D. 44; *Mary Darling Placer, in re*, 31 L. D. 64. These land office rulings are cited and approved in *Green v. Gavin*, 10 Cal. App. 330, 101 Pac. 931.

Blanket Claims.

In *Stenfield v. Espe*, 171 Fed. 825, 96 C. C. A. 497, an association claim was located over a quarter-section which had been largely covered by several smaller locations leaving only non-contiguous vacant spaces between. The Court held the entire blanket location void.

Association Claims.

The language of R. S. Sec. 2331 is specific that no placer "location shall include more than 20 acres for each individual claimant." The maximum claim being 160 acres, requires of course 8 persons to take up a full association claim and the rulings have been strict that the use of names of nominal parties is not sufficient. *United States v. Brookshire Oil Co.*, 242 Fed. 718. There must be 8 persons and each person must be actually interested in the location. This avoids many records where the names of nominal parties have been used.

It has even been held that where the parties, cotemporaneous with the location formed a stock company with an unequal distribution of shares, that the location was void as to those who

received an excess number of shares: equivalent to holding that each one eighth of the shares should represent 20 acres. *Nome Co. v. Snyder*, 187 Fed. 385, 109 C. C. A. 217. But after the location has been made on a completed association, the locators may distribute unequally. *Rooney v. Barnette*, 200 Fed. 700, 119 C. C. A. 116.

When names are used with agreement to reconvey without consideration the association is not a valid one. *Mitchell v. Cline*, 84 Cal. 409, 24 Pac. 164. *Durant v. Corbin*, 94 Fed. 382, 20 M. R. 84. And the grantees of the nominal locators hold no better title. *United States v. Brookshire Oil Co.*, 242 Fed. 718.

Any device to secure more than 20 acres to one person, or 160 acres to an association, is a fraud upon the government. Locations so made are invalid. *United States v. California Midway Oil Co.*, 259 Fed. 343.

Dummies.

Where the government is not a party to the suit it may not be proved that the names of dummies were used for plaintiff's benefit. *Riverside, etc., Co. v. Hardwick*, 16 N. M. 479, 120 Pac. 323. And such evidence has been excluded where the fact was not pleaded. *Hall v. McKinnon*, 193 Fed. 572, 13 C. C. A. 440.

An association record of 160 acres is but a single claim. *Miller v. Chrisman*, 140 Cal. 440, 98 Am. St. Rep. 63, 73 Pac. 1083, 74 Pac. 444; *Consolidated Mut. Oil Co. v. United States*, 245 Fed. 521, 157 C. C. A. 633.

A corporation is one person without regard to the number of its stockholders. *Igo Bridge Placer, in re*, 38 L. D. 281; *Coal- inga Hub Oil Co., in re*, 40 L. D. 401.

Nonresidents.

The law permits location in the names of absent citizens by attorney in fact. *United States v. California Midway Oil Co.*, 259 Fed. 343.

Corporate Employees.

When three persons in the employ of a corporation located 60

acres it was held valid only to the extent of 20 acres. *Gird v. California Co.*, 60 Fed. 532, 18 M. R. 45.

Repeated Locations.

One person may locate any number of placer locations and one association may make repeated locations, outside of Alaska. *Riverside, etc., Co. v. Hardwick*, 16 N. M. 479, 120 Pac. 323; *United States v. California Midway Oil Co.*, 259 Fed. 343; *United States v. Brookshire Oil Co.*, 242 Fed. 718.

Excess Locations.

The staking of ground in excess of the legal size of the claim, has led to a series of decisions. Where the excess is chargeable to mere error in overstepping, it does not invalidate the claim, except as to the excess, but where the excess is gross, evidently intended to take up more ground than allowed, or without other valid excuse, the whole location is void. *Leggatt v. Stewart*, 5 Mont. 107, 2 Pac. 320.

The real point of difficulty is the status of the excess ground, and the right of a third party to make a location and record upon the same.

A number of the decisions treat the case as one of mistake, which is not disputable, but they go further and hold that the party has a reasonable time in which to correct his mistake. In *Zimmerman v. Funchion*, 161 Fed. 859, 89 C. C. A. 53, followed by *Waskey v. Hammer*, 170 Fed. 31, 95 C. C. A. 305, the locator was allowed a reasonable time in which to select the acreage to which he was entitled and it was held that he could elect on which side or end he would cut out the excess. And the same as to each of the bona fide locators who were in association with unauthorized parties. *Cook v. Klonos*, 168 Fed. 700, 94 C. C. A. 144.

In *Adams v. Yukon M. Co.*, 251 Fed. 226, 163 C. C. A. 382, a full placer association claim had been located with excess of 27 acres. A third party located over one side of the claim. The Court held that such location was null because no demand had

been made on the first locators to draw in their line and eliminate the excess.

In *Nelson v. Smith*, 42 Nev. 302, 176 Pac. 261, 178 Pac. 625, where a location had been made 262 feet in excess of the 900 feet claimed on the east end of the lode, the Nevada Supreme Court held that third parties had the legal right to locate this excess, but affirmed judgment to the contrary on a technical point of practice.

In *Jones v. Wild Goose, etc., Co.*, 177 Fed. 95, 29 L.R.A. (N.S.) 392, 101 C. C. A. 349, it was even held that an excess claim was valid to its entire extent until the locator has been advised of the excess and had made his selection. And that a location overlapping such excess claim was void. To which decision Gilbert J. with good reason refused to assent.

If these decisions stand, it becomes a question of fact as to what is a reasonable time to reset the stakes and correct the record.

When the excess has been eliminated it becomes open to relocation by any competent party. *Gohres v. Illinois, etc., Mining Co.*, 40 Or. 516, 67 Pac. 666.

The department frequently exercises its power to cut down an excess placer location and to eliminate nonmineral ground. *In re American Sm. Co.*, 39 L. D. 299.

It would seem to us that when the excess locator is allowed the body of his claim, he has received indulgence enough. Whether his trespass was willful or inadvertent, in either case he has staked in ground which he had no right to claim. If he is allowed to say where he will draw in his lines he may prevent other prospectors from locating on either side or end of the claim and may collude with the discoverer on one side and wrong a discoverer on the other.

Abandonment. Annual Labor.

The expenditure of \$100 on each claim has been required ever since 1874 with several special Acts dispensing with it for 1893, 1894, 1917, 1918 and 1919 allowing for those years a certificate in lieu to be filed. Acts also were passed saving the claims with-

out labor for soldiers of the Spanish war and the war with Germany.

Abandonment and Assessment Work.

Abandonment may be shown without reference to the neglect to perform the annual labor, but most of the cases on abandonment are predicated on the fact that such neglect results in the legal conclusion of abandonment. Abandonment is a mixed question of acts and intention. *Bartley v. Phillips*, 165 Pa. 325, 18 M. R. 145, 30 Atl. 842.

Mining claims may be held by performance of labor indefinitely without going to patent. *Double Eagle M. Co. v. Hubbard*, (Cal. App.) 183 Pac. 282.

The mental intention to abandon need not be proved. All the facts including cessation of work, are to be considered. The question of abandonment is for the jury. *Munsey v. Marnett Oil, etc., Co.* (Tex. Civ. App.) 199 S. W. 686.

In Lease Cases.

Where the facts proving abandonment are clear and undisputed, the Court should determine the fact of abandonment and direct a verdict for the lessor. *McMillin v. Titus*, 222 Pa. 500, 72 Atl. 240.

No reasonable distinction can be drawn on the issue of abandonment in location cases and the like issue in the lease cases, cited in Chapter 26.

The failure to file the affidavit does not impair the locator's rights to patent. *Hazzard v. Johnson* (Cal. App.) 187 Pac. 121.

Co-owner Disputing Title.

A cotenant cannot claim contribution on annual labor expenditures where he asserts exclusive title to the claims and has denied the right of the cotenant to contribute to the expenses. *Becker Franz Co. v. Shannon Copper Co.*, 256 Fed. 522. And a party preventing performance cannot take advantage of the nonperformance. *Ames v. Sullivan*, 235 Fed. 880, 149 C. C. A. 192.

Group Claims.

When the work is done on a single claim or at a distance from the group, it must be intended for the common benefit. *Anvil Hydraulic, etc., Co. v. Code*, 182 Fed. 205, 105 C. C. A. 45. But when the owner of several claims does work only enough to save a part of them, he should designate the claims he intends to hold, outside of the claim on which the work was done. *McKirahan v. Gold King Mining Co.*, 39 S. D. 535, 165 N. W. 542.

Test of Value.

The true test is the actual value of improvement to the mine. Cost of Labor and materials is evidence of such value. *McKirahan v. Gold King Mining Co.*, 39 S. D. 535, 165 N. W. 542.

By Administrator.

It was ruled in an estate case that the administrator could not claim credit for annual labor unless such expenditure was allowed by order of court. *Delaney's Estate, in re*, 41 Nev. 384, 171 Pac. 383.

Resumption of Work.

Plaintiff, the owner, began work on December 30 and 31, 1913, kept on early in 1914, finished the work and filed proof of labor for 1913. Defendant went on the claim January 1, 1914, and relocated, and it was ruled that the plaintiff had saved his claim. *Plough v. Nelson*, 49 Utah 35, 161 Pac. 1134.

Oil Claims.

The incidents which distinguish oil claims from other locations with reference to the assessment work, are considered in *Gird v. California Oil Co.*, 60 Fed. 531, 18 M. R. 45: with the holding that they do not qualify the rule as to work on group claims.

Smith v. Union Oil Co., 166 Cal. 217, 135 Pac. 966, construes the five claims Act and rules that working one claim will not hold the other four, upon which no discoveries had been made, and that the labor on one claim referred to in the Act, means

the assessment work and does not include work done before discovery.

This decision was affirmed in *Union Oil Co. v. Smith*, 249 U. S. 337, where the distinction between discovery on oil and on other classes of claim is conceded but with the holding that while the possession without discovery will be protected against surreptitious intrusion, an ultimate discovery in fact is indispensable and as the syllabus states:

"Where two contiguous tracts are claimed by the same party under oil land locations without discovery of mineral, drilling a well on one of them, for the purpose of discovering oil, even though it tends to determine the oil-bearing character of the other also, will not avail to hold the other against an intervening qualified claimant who enters upon it peaceably and diligently prosecutes discovery work on his own account."

Perjury.

In *Vedin v. United States*, 257 Fed. 550, the defendant was convicted of perjury in making a false affidavit of labor.

Amendment. Relocation.

The right to amend the location notice and record applies to oil claims. *Dean v. Omaha-Wyoming Co.*, 21 Wyo. 133, 128 Pac. 881, 129 Pac. 1023.

The department has held that a location of the full acreage allowed cannot of course be amended to increase the size of the claim. *Garden Gulch Placer*, 38 L. D. 28. But in the same case holds that the owner of two contiguous claims cannot amend them into one so as to make the ground a single claim. If the acreage be not increased beyond the legal limit we can see no reason whatever for this ruling and it has been done in hundreds of cases where small claims under district rules were relocated as a single claim upon proceeding to apply for patent of the enlarged area allowed by the Mining Act of 1872.

Where an invalid association claim of 160 acres comes by deed into one owner, the claim being void because there was no discovery, the supposed owner cannot, after he makes a discov-

ery, record the entire 160 acres in his own name. *In re Yard*, 38 L. D. 59.

But such ruling would not apply where the original record was valid and the present owner merely wanted by a new record to correct his boundaries or amend the description.

An invalid association claim can be perfected by a single grantee to the extent of the 20 acres which one person can rightfully claim. *In re Bakersfield Co.*, 39 L. D. 460.

Presumption against the Relocation.

There is a presumption of discovery in favor of old locations. *Ralph v. Cole*, 249 Fed. 92, 161 C. C. A. 133. And the burden of proof is on the relocater. *Copper State Mining Co. v. Kidder* (Ariz.) 179 Pac. 641. Land covered by lode record with no discovery is open to location. *Ralph v. Cole*, 249 Fed. 92, 161 C. C. A. 133, Reversed on other points, *Cole v. Ralph* (U. S.) 40 Sup. Ct. Rep. 321.

The relocater is not favored—especially where he is a party who at one time did the assessment work for the old claim. *Gold Creek, etc., Mines & Smelter Co. v. Perry*, 94 Wash. 624, 162 Pac. 996.

Location on Abandoned Ground.

Where mere paper location has been made upon placer ground, and possession has been abandoned, the land is open to relocation. *United States v. California Midway Oil Co.*, 259 Fed. 343.

Location on Restored Land.

When a placer was located on land patented to a railroad, and the patent was set aside, the location made before the land was formally restored to the public domain was valid. *Double Eagle M. Co. v. Hubbard* (Cal. App.) 183 Pac. 282.

Form of Location Certificate.

Know all men by these presents, that I, Thomas Lambie, of the city and county of Denver, State of Colorado, a citizen of

the United States claim by right of discovery and location the Lambie Placer Mining Claim containing 20 acres, situate in the Never Never Mining District, County of Mojave, State of Arizona, bounded and described as follows, to wit:

Beginning at corner No. 1 the south west corner, a stake in mound of stones and running thence 660 feet due north to corner No. 2; thence east 1320 feet to corner No. 3 the north-east corner; thence south 660 feet to corner No. 4 and thence west 1320 feet to corner No. 1 the place of beginning.

Each stake is set in mound of stone or earth and is at least $4\frac{1}{2}$ feet long and set 1 foot in the ground and the mounds of stone are at least 3 feet in diameter at the base.

From corner No. 1 a Palo Verde tree, 6 inches in diameter, market B. T. bears north 45 degrees west 30 feet distant and U. S. locating monument bears north 23 degrees west about 1 mile distant and King Solomon peak bears south 20 degrees east. This claim adjoins the East side line of the Camouflage Placer Mining Claim.

Date of discovery, October 7, 1919.

Date of location and of posting notice on the claim October 14, 1919.

Date of this certificate October 15, 1919.

Thomas Lambie.

Witness:

Paul M. Segal.

The above form would be valid in the Mining States generally.

CHAPTER 60.

APPLICATION FOR PATENT.

There is no distinction between an application for patent on an oil placer and an application on any other kind of placer.

The procedure is given at length in the 15th edition of the Mining Rights and we only add the rulings since that edition was published and give in chapter 88 the procedure for application for placer on surveyed lands only.

\$500 Improvements.

This is a requirement on every application for patent since the Mining Act of May 10, 1872, without change, except that the department in early years allowed the \$500 on one claim to be enough to patent an entire group of any number of claims. This utterly unreasonable construction was later changed and now \$500. improvements must appear on each claim save that in a group, if the total improvements amount to enough to satisfy each claim, it matters not that they are unequally distributed and may all be shown on one or more of the several units of the group. *In re Aldebaran M. Co.*, 36 L. D. 551.

Roads and Trails

constructed in good faith for the manifest purpose of mining the claim covered by the application, are allowed as parcel of the expenditures. *In re Tacoma Lime Co.*, 43 L. D. 128.

Dredge or Derrick.

A dredge on a gold placer and a derrick on an oil claim have very close analogy. Each is necessary for the purpose of exhausting the values from the ground on which constructed and in each case after working out the particular claim the structure can be removed to another.

This question came up in the case of the *Garden Gulch Bar Placer*, 38 L. D. 28 where the department held that the cost of a dredge was a valid expenditure to make good the required \$500. We can see no distinction between a dredge and a derrick. That such improvement may be transported to another claim is no more of an argument against allowing its expenditure than would be the argument that a house built on a homestead might not after the homestead was perfected, be removed to another homestead.

Land Office Entry.

This is the culmination of the application for patent and after the payment which precedes the issue of the receivers receipt all proceedings are ministerial and the applicant has only to wait until the papers are reached in their order when after a greater or shorter delay owing to the amount of business in the department the patent issues and is mailed to the local surveyor general who notifies the applicant or his attorney.

Attack after Entry.

Even after entry the application may be attacked and the land office has the power to set it aside although no adverse claim may have been filed. *Mineral Farm Co. v. Barrick*, 33 Colo. 410, 80 Pac. 1055. The cause for such action may be the omission of material steps in the application, or for misrepresentation or concealment of facts as to mineral character, and the proceeding is usually by protest. The jurisdiction of the land office when exclusive of the jurisdiction of the Courts is considered in chapter 62.

CHAPTER 61.

PATENT.

Equivalent to Royal Grant.

A patent is the written or record evidence of the passing of the ownership of land out of the king or the government into the citizen donee or purchaser. Under English rule the king was the original source of title and in those States which were British Colonies some few titles go back to royal grants. But the bulk of the land, dating back to 1787, the year of the adoption of the constitution, was held, in the original States by those States severally. In the new States then unorganized and unsettled, it belonged to the United States. Upon the acquisitions from France, Spain, Mexico and Russia, what few grants had been made, were recognized as valid by the treaties of cession.

Out of the original public domain much was donated by congressional grants but the bulk of the area was divested by patents to settlers.

Vests Title in Fee.

When a patent issues the grantee becomes owner in severalty and retains no connection with the original source of title; no ground rents were reserved, no royalties, and no severance of surface and mineral ownership. This was the settled policy until very recent years when the government began to grant coal, reserving the surface, and under the latest legislation it becomes a sort of partner in the oil lands, with leases, royalties and departmental supervision, all of which are innovations and with their added and unavoidable complications, it is not the province of this book to find fault or anticipate trouble.

Subsequent Discovery of Mineral.

Certain general principles concerning patents are: that where mineral rights are involved the subsequent discovery of oil or other underground value, is of no avail to divest the title carried by the patent and that fraud in the issue of a mineral land patent cannot be asserted by third parties. *Ketcham v. Pleasant Valley Co.*, 257 Fed. 274.

It is nowise different when the patent was issued upon an agricultural or other nonmineral claim. Unless they are specifically excepted the minerals go with the soil and they pass to the patentee in spite of an exception in his paper where the land department had no right to insert such reservation. See chapter 81.

Minerals discovered on agricultural grant after sale by the State belong to the purchaser. *Greene v. Robinson* (Tex.) 210 S. W. 498.

Cures Breaks in Chain of Title.

The issue of a patent is the last link in the chain of title and after its issue it is no longer assailable by adverse claims. It cures all defects in the possessory title and all breaks in the abstract of title, nor can it be recalled by the government which issued it. *Moore v. Robbins*, 96 U. S. 530, 24 L. ed. 848.

If there are breaks in the chain of title which have been overlooked by the land office the legal title still vests in the patentee and the only party to complain is the party who may assert that his rights have been disregarded and such party may or may not be able to make good an interest in the property. But in such case the patent being valid he must treat the patentee as a trustee for his use. *Burke v. Southern Pacific R. Co.*, 234 U. S. 670, 58 L. ed. 1527, 34 Sup. Ct. Rep. 907.

Trusts.

So also if there are any trusts in the chain of title they enure to the further protection of the beneficiary and if the trust is repudiated the beneficiary must bring his action against the holder

of the patented title and cannot compel a reversion to the old possessory title.

Fraud.

If fraud has been perpetrated in the procurement of the patent it must be one of two sorts, to wit: Fraud against a co-owner or a hostile owner, in which case the remedy must be sought against the patentee; or fraud against the government, in which latter case the government may sue to set it aside. *United States v. Iron Silver Co.*, 128 U. S. 673, 32 L. ed. 571, 9 Sup. Ct. Rep. 195.

But the title of a hostile owner, that is: One not in privity with the claim which has gone to patent, must be one which could not have been asserted by an adverse claim which is supposed to wipe out all such demands: for instance: where such hostile claimant has been fraudulently prevented from filing its adverse or where the applicant has agreed upon good consideration to make a deed of the conflict to the party who has failed to adverse. *Poncia v. Eagle*, 28 Ida. 60, 152 Pac. 208; *St. Louis Co. v. Montana Min. Co.*, 171 U. S. 650, 43 L. ed. 320, 19 Sup. Ct. Rep. 61, 17 M. R. 658; *Ducie v. Ford*, 138 U. S. 587, 34 L. ed. 1091, 11 Sup. Ct. Rep. 417.

An *ex parte* finding as to mineral or nonmineral value is open to contest until Issue of Patent. *Kirk v. Olson*, 245 U. S. 225, 38 Sup. Ct. Rep. 114.

Mineral Land Segregated by Land Office.

Petroleum is a mineral intended to be reserved under the Southern Pacific Railroad grants. It was the duty of the Land Office to segregate the mineral and the nonmineral sections. The department is supposed to adjudicate before the patent issues as to whether the land is mineral or nonmineral. Instead of that, the patent issued reserving the mineral. The Court held the reservation void, and further that only the government or parties in privity with the government could attack the patent because issued for mineral land. *Burke v. Southern Pacific*

R. R. Co., 234 U. S. 669, 58 L. ed. 1527, 34 Sup. Ct. Rep. 907. See page 251.

The case of *United States v. Southern Pacific R. R. Co.*, was decided by the District Court in favor of the government. (225 Fed. 197). This was reversed by the Circuit Court of Appeals. (249 Fed. 785). The main issue was whether the lands were known to be valuable for oil when patented. On the final review by the Federal Supreme Court the lands were ruled to be mineral and known to be mineral, and the patents were held void.

In another suit with the same title (260 Fed. 511) decided just before the federal opinion was handed down, BLEDSOE, J., deciding in favor of the patents, ably considers the question of what amounts to knowledge of value, but the final decision above cited, of course, governs the point as a question of fact in this instance.

Receiver's Receipt.

The receiver's receipt makes the entryman prima facie entitled to patent. *United States v. Record Oil Co.*, 242 Fed. 746, and a contract calling for patenting of land is complied with by proof of final entry. *Colm v. Francis*, 30 Cal. App. 742, 159 Pac. 237.

The Record of a Patent

in the local office is not required, because the record at Washington shows the issue of the paper but it is nevertheless always advisable to record it in the proper county so as to show on the abstract of title.

And in case of loss of the original, a certified copy may be obtained by request to the Commissioner of the General Land Office.

CHAPTER 62.

THE LAND OFFICE.

The land department is a special tribunal with *quasi judicial* functions and the Court will not by mandamus review its judgments on the mineral or nonmineral character of land. *United States v. Fisher*, 223 U. S. 683, 56 L. ed. 610, 32 Sup. Ct. Rep. 356. But such writ may issue where the department's duty is plain and merely ministerial and the situation exceptional. *Lane v. Hoglund*, 244 U. S. 174, 61 L. ed. 1066, 37 Sup. Ct. Rep. 558. The courts have no general supervisory power over the officers of the land department to control their decisions upon questions within their jurisdiction. *United States v. Hitchcock*, 190, U. S. 316, 47 L. ed. 1074, 23 L. ed. 698.

These cases are reviewed in *United States v. Lane* (U. S.) 40 Sup. Ct. Rep. 33. The Court refused to mandamus the land office to issue patent to coal lands in Alaska where their ruling had been upon a question of fact, to wit; the sufficiency of development required, recognizing the distinction there is between formal, that is, ministerial and discretionary action.

Duty to Determine Mineral Character.

In many classes of claims it becomes the duty of the land department to determine whether the land is mineral or not and in any such case the action of the department is final and conclusive. *Thomas v. Horst*, 54 Mont. 260, 169 Pac. 731; *Cameron v. Bass*, 19 Ariz. 246, 168 Pac. 645; *Cameron v. United States*, 250 Fed. 943, 163 C. C. A. 163. When such duty rests on the department it cannot escape it by excepting the minerals and such exception is void. *Burke v. Southern Pac. R. R. Co.*, 234 U. S. 670, 58 L. ed. 1527, 34 Sup. Ct. Rep. 907; *Vore v. Ephraim*, 173 Cal. 245, 159 Pac. 719. There can be no collateral attack

on such land office decisions. *Ketchum Coal Co. v. Pleasant Valley Coal Co.*, 50 Utah 395, 168 Pac. 86.

The rulings of the department on these points coincide with the above cited judicial decisions. *Knapp, in re*, 47 L. D. 156; *Independent Land Co. v. Lavelle*, 47 L. D. 169.

This case, in itself of trifling importance, may become a precedent of far-reaching consequences: like the instance of *Barron v. Baltimore*, 1 Peters 243, which led to the denial of the benefit of the bill of rights as a limitation on State legislation.

Cannot Legislate.

In a case arising under the war time prohibition Act, an important ruling was made that the Interior Department could not add to the terms of an Act of Congress, so as to make conduct criminal which such law left untouched. *United States v. Standard Brewery* (U. S.) 40 Sup. Ct. Rep. 139. But under the case of *United States v. Grimaud*, 220 U. S. 506, 55 L. ed. 563, 31 Sup. Ct. Rep. 480, an indictment will lie for violation of their regulations. The Court says: "It must be admitted that it is difficult to define the line which separates legislative power to make laws, from administrative authority to make regulations." And the decision proceeds to recognize their power to enforce their regulations by penal procedure when the Act prohibited by the regulation is in itself unlawful, altho amounting only to a mere trespass.

When before the Court in 216 U. S. 614, the decision below was affirmed by an evenly divided Court, but on rehearing it was reversed in an opinion which, while it fixes the law, does not on every mind produce conviction. It will doubtless be cited to sustain a construction of the Oil Leasing Act as a surrender of complete control of the public domain to one department to a large extent outside of judicial protection.

The Land Office has complete jurisdiction to determine the mineral or nonmineral character of land and to determine the validity of an alleged mining location on the public land. *Cameron v. U. S.*, 40 Sup. Ct. 410, affirming 250 Fed. 943.

It is the province of the Land Department to adjudicate controversies on the issue of mineral *vel non* and the intervention

of a law Court is useless except to preserve the *status quo* of the property. *Independent L. & C. Co. v. Lavelle*, 47 L. D. 169; *Thomas v. Horst*, 54 Mont. 260, 169 Pac. 731; *Lynch v. U. S.*, 138 Fed. 535.

The Land Office hold jurisdiction to decide on the mineral character of public lands even after the State has selected lieu lands and has granted an oil lease on such land. *U. S. v. Ridgely*, 262 Fed. 675.

The Courts will not interfere with details of administration committed by Congress to the discretion of the Secretary of a Department. *Southern Pac. R. Co. v. Lane*, 263 Fed. 637; *Decatur v. Paulding*, 14 Pet. 497, 515.

The Land Office is a branch of the Interior Department, and is explicitly defined by Ross, C. J., in this language: "Nothing in our public land laws is more firmly settled than that the sale and disposal of the public lands has been placed by statute under the control of the Land Department, at the head of which is the Secretary of the Interior, and which includes a bureau headed by the Commissioner of the General Land Office, to whom, as a special tribunal with *quasi* judicial powers, Congress has confided the execution of the laws which it has enacted for the sale and disposal of the various kinds of public lands." *Devils Den Oil Co. v. United States*, 251 Fed. 554, 163 C. C. A. 542.

Enlarged Jurisdiction.

The specific jurisdiction of the Land Office is over the public domain and it has been generally confined to ministerial duties but under the power conferred by the Oil Leasing Act of 1920 and many other recent Acts, its functions impinge not only on the legislative, but on the judicial department and it practically becomes a Court wholly unsafeguarded by the legal education of its officers or the restraining influence of an attendant panel of jurors, and the public audience of citizens. When public land is sold, the duties of the Land Office cease, but where land is leased, it retains supervision through the life time of the tenancy.

Jurisdiction when Exclusive.

In one of the Pickett Act cases, *United States v. Record Oil Co.*, 242 Fed. 746 the government attacked the claim as void. Entry had already been made in the Land Office and the Court held that this gave jurisdiction to the Land Office, and while the patent application was there pending, until final action of the department, the entry was not open to attack in the Courts. And in a similar suit in *Devil's Den Oil Co. v. United States*, 251 Fed. 548, 163 C. C. A. 542 (reversing 236 Fed. 973) where the claims were contested in the Land Office, between hostile claimants, the Court was held to be without jurisdiction to determine the rights of the parties as against the United States.

But pending such litigation in the Land Office, the Federal Court has jurisdiction to prevent waste and destruction of property. *Devil's Den Oil Co. v. United States*, 251 Fed. 548, 163 C. C. A. 542; *El Dora Oil Co. v. United States*, 229 Fed. 946, 144 C. C. A. 228.

CHAPTER 63.

THE WITHDRAWAL ACTS.

On September 27, 1909 the President withdrew by proclamation from entry in any form 3,041,000 acres of public land in California and Wyoming.

In *United States v. Midwest Oil Company*, 236 U. S. 459, 59 L. ed. 673, 35 Sup. Ct. Rep. 309, reversing 216 Fed. 802, the validity of this order was contested but upheld by a majority opinion on the ground that such power had been constantly exercised by the chief executive and was therefore legal. Judges Day, Vandevanter and McKenna filed a dissenting opinion. But the majority opinion stands and the validity of the proclamation has of course been ever since recognized.

The case is confined to upholding the right of the President to make the order and does not pass upon any of the instances where rights were claimed to have been vested and therefore not affected by the withdrawal.

The order itself describes immense tracts of land out of which many sections and subdivisions of sections had been already located and even patented, the order of course having no effect upon such parcels.

But this proclamation of 1909 was followed by an Act of Congress of June 25, 1910, known as the Pickett Act authorizing in terms such withdrawals. It provided that the lands were to remain open to prospect for minerals other than coal, oil, gas and phosphate.

By Act of August 24, 1912 the Act was amended, the right to explore for mining values being restricted to metalliferous minerals.

The rights of already perfected claims having a valid location including discovery were protected but the rights of oil seekers who had not yet made a complete discovery were con-

fined to those who were "in diligent prosecution of work leading to discovery of oil or gas."

The department in the *Pacific Midway Oil Company case*, 44 L. D. 420 (April 21, 1915) held that efforts to secure capital or a purchaser to take over the property did not bring the claimants within the saving clause.

And in a later decision, June 19, 1920, by the Secretary, *The Honolulu Consolidated Oil Co.* was refused patents because no discoveries were made prior to the withdrawal of the lands under the Pickett Act, and the attempted compliance under the saving clause was held insufficient, altho roads had been constructed on and lumber had been hauled to some of the claims. The claim to patent was based upon prosecution of group work and a discovery made on an adjoining patented section belonging to grantor of claimant.

The facts in the *McCutchen case* (*United States v. McCutchen*) as reported in 234 Fed. 702, were that the lands had been withdrawn prior to any actual discovery of oil. After such withdrawal oil in quantity was tapped, but the Court construed the withdrawal acts with much strictness holding that the defendants although their previous expenditures had been great were not at the time of the withdrawal in diligent prosecution of work "leading to a discovery of oil" and that the government was entitled to an injunction and a receiver.

The same case coming again before the Court (238 Fed. 575) the decree was signed against the defendants after holding that the facts did not justify a finding that defendants had made any discovery within the proper time.

The Court after reciting the expenditure made by the oil seekers and the vast value given by such expenditure to the land theretofore almost worthless, premises the decree in this language: "In so far as equitable considerations, proceeding from the conscience of the chancellor, and operating upon the conscience of the parties, have to do with this case, the Court purposes to do only that which is equity, and which is in line with the Court's most profound conceptions of high moral dealings."

Then follows the reference of the case to the master to ascertain the damages caused to the government.

In the same opinion the Court gives conclusive reasons why the marketing companies should not be held as trespassers.

The Court held that exemplary damage would not be allowed and that the defendants were not wilful trespassers deciding all abstract questions in favor of the defendants and on all the substantial points in the case holding against them.

After the *Midwest* decision above cited the *Midway* case came before the District Court of Southern California in *United States v. Midway, etc., Co.*, 232 Fed. 619 (May 1, 1916) where the Court held that none of the several defendant companies had any title to the land because they were not actually engaged in the diligent prosecution of work and passing to the measure of damage allowed that the cost of production should be deducted from the gross value of the oil and the defendant allowed the value of useful improvements made and that their machinery would not be confiscated. That except to this extent they were wilful trespassers.

The Court dismissed the suit as to the marketing companies who had bought the oil.

In *United States v. Grass Creek Oil Co.*, 236 Fed. 481, 149 C. C. A. 533, the defendants had located their claims, done preliminary prospecting and at the date of the withdrawal order were making preparations to drill and holding possession of the land through a caretaker; the Court held that these facts brought them within the proviso saving the rights of bona fide occupants in diligent prosecution of work leading to discovery of oil or gas.

In *United States v. North American Oil Company*, 242 Fed. 723, the claim of the defendant was covered by the withdrawal order of September 27th 1909. Its grantor had made no discovery but had made large expenditures and had not commenced drilling merely because it was unable to procure the water necessary for sinking and the Court held that the title of the defendant was valid.

The Court fairly considers the status of the case where oil
M. O. R.—17.

lies at the depth of several thousand feet requiring months of time and elaborate and expensive machinery to reach it.

It further held that where at the date of withdrawal the claimant was engaged in the work of discovery and there was no subsequent abandonment that no more than ordinary diligence was required.

United States v. Thirty-two Oil Company, 242 Fed. 730, was a somewhat similar case. The Court held that whether the occupant was engaged in the diligent prosecution of the work was a question of fact dependent upon the circumstances of each particular case; that work outside the claim such as road building might count but that a party who was waiting to learn the results of drilling on adjacent claims was not protected.

In *United States v. Record Oil Co.*, 242 Fed. 746, the Court considered the status of claims which had been entered in the Land Office holding that the government could not maintain its bill to attack the validity of defendant's claims under the Pickett Act, but that the procedure must be by attack in the Land Office which by the application had acquired jurisdiction.

The Court also held that the Pickett Act was a congressional modification of the proclamation restoring bona fide occupants to the position of parties allowed to perfect their title.

In *Consolidated Mutual Oil Co. v. United States*, 245 Fed. 521, 157 C. C. A. 633, defendant was in possession of four claims on one of which it was diligently sinking at the time of the proclamation. This sinking later resulted in the discovery of oil. The Court held that not only the claim on which oil was struck but the whole group was protected.

In this case the Court review much of the Pickett Act litigation. They say that where an actual discovery had been made whereby an equitable estate had become vested in the claimant, such claimant did not need the protection of the proviso of the Act. That such proviso was intended for the benefit of the claims which had no discovery but had equities deserving protection and was to be liberally construed in their favor. In *United States v. Rock Oil Co.*, 257 Fed. 331, the defendants were shown to have been in possession on the date of the withdrawal order, kept diligently at work and shortly afterwards

found oil. But there were alleged defects in their location papers. The Court held that such defects, or even the attempt of their grantors to secure more land than they were entitled to, did not affect their rights as parties within the protection clause of the Pickett Act. The opinion further holds, the same as *Cons. Mutual Oil Co. v. United States*, 245 Fed. 521, 157 C. C. A. 633, that the Act is to be liberally construed in favor of the oil seekers.

In *United States v. Honolulu Co.*, 249 Fed. 167, the Court doubted whether oil boring on one of a group was the bona fide occupancy of the other claims, enjoined further drilling and appointed a receiver—with limitations on his powers for the protection of the defendant.

In *United States v. Stockton Midway Oil Co.*, 240 Fed. 1006, the defendant owned the four quarters of section 14 located as four oil placers. At the time of the passage of the Pickett Act no discovery of oil had been made but the defendant was in diligent prosecution of work on the southwest quarter under a contract calling for wells on the other three quarters after oil was struck on the first started well on the southwest quarter.

The Court held that the group act had no bearing on the case and that work or discovery on any one quarter section was not work or discovery such as to save the other three quarters from forfeiture under the Pickett Act.

The Court further held that under the Act "rules are to be applied with strictness in favor of the government", but that parties holding possession without discovery are to be protected against all later comers having no better right altho not as against the government.

The validity of the withdrawal Acts cannot be contested in an action between contracting parties not involving the question of such validity. *Johnson v. Hinkel*, 29 Cal. App. 78, 154 Pac. 487.

The cases above cited, since these decisions were made, have remained practically in *statu quo* and are now provided for to a certain extent under the Oil Leasing Act of 1920 which is considered later.

CHAPTER 64.

THE OIL LEASING ACT.

INTRODUCTORY.

The idea of governmental prerogative in mines and minerals, is both ancient and wide spread. Under the Roman Empire the sovereign owned the mines of gold, silver and precious stones absolutely. The baser metals were allowed to the citizen subject to a royalty. On this canon of the civil law the mining codes of most of the European States, and of the Spanish provinces until their liberation were based. English law reserved to the crown the royal metals, but claimed no rights in the baser minerals. This is ruled with much mediaeval learning in that curious decision in the reign of Queen Elizabeth (Plowden p. 310) known as the *Great Case of Mines*.

The silver mines of Laurium in Greece were worked by slaves for the benefit of the citizens of Athens, and because their dividends gave to each citizen a practical support, so that he could live without labor, Athens, while this easy unearned revenue lasted, was able to show a longer list of philosophers and otherwise eminent men than any city of its size in the world.

That King Solomon exploited the gold of Ophir is of common knowledge, altho the amount he realized as stated in 1 Kings 9, 28, reduced to modern money, was less than what more than one single mine has produced in recent times.

That oil and gas were never so monopolized was only because they were not known. The history of the governmental claim to mines is found in the first chapter of Mr. Lindley's exhaustive work on mining law and in MacSwinney (p. 50) the English authority on the same subject.

The rights of the crown were asserted by frequent reservations in the colonial grants and, following consistent precedents, were demanded by the Continental Congress under the Ordi-

nance of 1785, two years before the Federal Constitution was adopted—one-third of the silver, lead and copper on sale of the public domain was to be reserved to the government. *Northern Pac. Ry. Co. v. Soderberg*, 188 U. S. 530, 47 L. ed. 575, 23 Sup. Ct. 365.

Up to 1866 there was no federal law of general application to the mineral values of the public land, but in sporadic Acts, lead and copper mines in localities were excluded from sale and salines were constantly reserved. But no attempt was made to lease any minerals and so reserve a royalty revenue to the government until the Act of 1807 under which leases for short periods were allowed on lead mines.

This Act we find considered in two cases: *United States v. Gratiot*, 14 Peters, 526, 10 L. ed. 573, and *Lorimier v. Lewis*, 1 Morris (Iowa) 253, 39 Am. Dec. 462, 12 M. R. 467, holding that the President when authorized by Congress had the power to make such leases.

The royalty derived from these leases yielded less than one-fourth of the expense of collecting it. Message of President Polk, Dec. 2, 1845; Lindley on Mines, Sec. 34.

We know of no other attempt to derive revenue by royalty from mines altho it was suggested in Congress after the discovery of gold in California in 1848, until the passage of the Oil Leasing Bill, approved February 25, 1920, under which the government embarks on a new policy under conditions entirely different from those which existed in 1807. But while more than a century elapses between the two Acts and the local surroundings are vastly changed the economic principles involved never alter and a partnership in business between the nation and its citizens is something experimental, novel, socialistic and—its results will follow without the aid of any prediction on our part.

We print the entire Act without comment but broken into paragraphs with headings which are no part of the Act. This is necessary because the bill in its passage received none of the trimming in committee which should have separated the sections into convenient divisions.

Then follows a brief analysis of the Act and later the paragraphs will be grouped under their proper heads.

CHAPTER 65.

FULL TEXT OF THE OIL LEASING ACT AND ANALYSIS OF ITS SECTIONS.

An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain.¹

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Enumeration of Minerals. The Public Domain.

That deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests,

Exclusions.

but excluding lands acquired under the Act known as the Appalachian Forest Act, approved March 1, 1911 (Thirty-sixth Statutes, page 961), and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided,

To Whom Open.

Shall be subject to disposition in the form and manner provided by this Act to citizens of the United States, or to any

¹LOG OF THE BILL FROM THE OFFICIAL RECORD.

Public law No. 146. Oil and gas leasing bill. S. 2775 (Smoot). Reported in Senate August 15, 1919. Passed Senate September 3. House Report 398 (Oct. 21). Passed House October 30. Conferees appointed in Senate October 31 and in House November 1. Conference: House Report 600 (Feb. 6, 1920). Agreed to in House February 10 and in Senate February 11. Sent to President February 13. Approved February 25, 1920.

association of such persons, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, and in the case of coal, oil, oil shale, or gas, to municipalities:

Helium.

Provided, That the United States reserves the right to extract helium from all gas produced from lands permitted, leased, or otherwise granted under the provisions of this Act, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands, it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof;

Stock Ownership Prohibited to Certain Aliens.

And provided further, That citizens of another country, the laws, customs, or regulations of which, deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this Act.

Coal to Be Leased by Competition. Alaska Excepted.

SEC. 2. That the Secretary of the Interior is authorized to, and upon the petition of any qualified applicant shall divide any of the coal lands or the deposits of coal, classified and unclassified, owned by the United States, outside of the Territory of Alaska, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in the opinion of the Secretary of the Interior, will permit the most economical mining of the coal in such tracts, but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract, and thereafter the Secretary of the Interior shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding or by such other

methods as he may by general regulations adopt, to any qualified applicant:

Equitable Rights.

Provided, That the Secretary is hereby authorized, in awarding leases for coal lands heretofore improved and occupied or claimed in good faith, to consider and recognize equitable rights of such occupants or claimants:

Coal Prospecting Permits.

Provided further, That where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in any unclaimed, undeveloped area, the Secretary of the Interior may issue, to applicants qualified under this Act, prospecting permits for a term of two years, for not exceeding two thousand five hundred and sixty acres; and if within said period of two years thereafter, the permittee shows to the Secretary that the land contains coal in commercial quantities, the permittee shall be entitled to a lease under this Act for all or part of the land in his permit:

Advertisement Required.

And provided further, That no lease of coal under this Act shall be approved or issued until after notice of the proposed lease, or offering for lease, has been given for thirty days in a newspaper of general circulation in the county in which the lands or deposits are situated:

Leases to Railroads.

And provided further, That no company or corporation operating a common carrier railroad shall be given or hold a permit or lease under the provisions of this Act for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporations, and no such company or corporation shall receive or hold more than one permit or lease for each two

hundred miles of its railroad line within the State in which said property is situated, exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam: *And provided further*, That nothing herein shall preclude such a railroad of less than two hundred miles in length from securing and holding one permit or lease hereunder.

Additional Lands to Limit of 2560 Acres.

SEC. 3. That any person, association, or corporation holding a lease of coal lands or coal deposits under this Act may, with the approval of the Secretary of the Interior, upon a finding by him that it will be for the advantage of the lessee and the United States, secure modifications of his or its original lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area embraced in such modified lease exceed in the aggregate two thousand five hundred and sixty acres.

Coal Exhausted.

SEC. 4. That upon satisfactory showing by any lessee to the Secretary of the Interior that all of the workable deposits of coal within a tract covered by his or its lease will be exhausted, worked out, or removed within three years thereafter, the Secretary of the Interior may, within his discretion, lease to such lessee an additional tract of land or coal deposits, which, including the coal area remaining in the existing lease, shall not exceed two thousand five hundred and sixty acres, through the same procedure and under the same conditions as in case of an original lease.

Consolidation of Leases.

SEC. 5. That if, in the judgment of the Secretary of the Interior, the public interest will be subserved thereby, lessees holding under lease areas not exceeding the maximum permitted under this Act may consolidate their leases through the surrender

of the original leases and the inclusion of such areas in a new lease of not to exceed two thousand five hundred and sixty acres of contiguous lands.

Uniting Coal or Phosphate Leases on Noncontiguous Tracts.

SEC. 6. That where coal or phosphate lands aggregating two thousand five hundred and sixty acres and subject to lease hereunder do not exist as contiguous areas, the Secretary of the Interior is authorized, if, in his opinion the interests of the public and of the lessee will be thereby subserved, to embrace in a single lease noncontiguous tracts which can be operated as a single mine or unit.

Coal Royalty—Minimum Tonnage—Strikes—Suspension of Work.

SEC. 7. That for the privilege of mining or extracting the coal in the lands covered by the lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall be fixed in advance of offering the same, and which shall not be less than 5 cents per ton of two thousand pounds, due and payable at the end of each third month succeeding that of the extraction of the coal from the mine, and an annual rental, payable at the date of such lease and annually thereafter, on the lands or coal deposits covered by such lease, at such rate as may be fixed by the Secretary of the Interior prior to offering the same, which shall not be less than 25 cents per acre for the first year thereafter, not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively, and not less than \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods upon condition of diligent development and continued operation of the mine or mines, except when such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and

conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods: *Provided*, That the Secretary of the Interior may, if in his judgment the public interest will be subserved thereby, in lieu of the provision herein contained requiring continuous operation of the mine or mines, provided in the lease for the payment of an annual advance royalty upon a minimum number of tons of coal, which in no case shall aggregate less than the amount of rentals herein provided for: *Provided further*, That the Secretary of the Interior may permit suspension of operation under such lease for not to exceed six months at any one time when market conditions are such that the lease cannot be operated except at a loss.

No Royalty on Coal for Private Use.

SEC. 8. That in order to provide for the supply of strictly local domestic needs for fuel, the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue limited licenses or permits to individuals or associations of individuals to prospect for, mine, and take for their use but not for sale, coal from the public lands without payment of royalty for the coal mined or the land occupied, on such conditions not inconsistent with this Act as in his opinion will safeguard the public interests: *Provided*, That this privilege shall not extend to any corporations:

Coal Leases to Cities.

Provided further, That in the case of municipal corporations the Secretary of the Interior may issue such limited license or permit, for not to exceed three hundred and twenty acres for a municipality of less than one hundred thousand population, and not to exceed one thousand two hundred and eighty acres for a municipality of not less than one hundred thousand and not more than one hundred and fifty thousand population; and not to exceed two thousand five hundred and sixty acres for a municipality of one hundred and fifty thousand population or more, the land to be selected within the State wherein the municipal

applicant may be located, upon condition that such municipal corporations will mine the coal therein under proper conditions and dispose of the same without profit to residents of such municipality for household use: *And provided further*, That the acquisition or holding of a lease under the preceding sections of this Act shall be no bar to the holding of such tract or operation of such mine under said limited license.

Lease of Phosphates.

SEC. 9. That the Secretary of the Interior is hereby authorized to lease to any applicant qualified under this Act any lands belonging to the United States containing deposits of phosphates, under such restrictions and upon such terms as are herein specified, through advertisement, competitive bidding, or such other methods as the Secretary of the Interior may by general regulation adopt.

Phosphate Leases Limited to 2560 Acres.

SEC. 10. That each lease shall be for not to exceed two thousand five hundred and sixty acres of land to be described by the legal subdivisions of the public land surveys, if surveyed; if unsurveyed, to be surveyed by the government at the expense of the applicant for lease, in accordance with rules and regulations prescribed by the Secretary of the Interior and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such survey; deposits made to cover expense of surveys shall be deemed appropriated for that purpose; and any excess deposits shall be repaid to the person, association, or corporation making such deposits or their legal representatives: *Provided*, That the land embraced in any one lease shall be in compact form, the length of which shall not exceed two and one half times its width.

Phosphate Royalties.

SEC. 11. That for the privilege of mining or extracting the phosphates or phosphate rock covered by the lease the lessee shall pay to the United States such royalties as may be specified in

the lease, which shall be fixed by the Secretary of the Interior in advance of offering the same, which shall be not less than 2 per centum of the gross value of the output of phosphates or phosphate rock at the mine, due and payable at the end of each third month succeeding that of the sale or other disposition of the phosphates or phosphate rock, and an annual rental payable at the date of such lease and annually thereafter on the area covered by such lease at such rate as may be fixed by the Secretary of the Interior prior to offering the lease, which shall be not less than 25 cents per acre for the first year thereafter, 50 cents per acre for the second, third, fourth, and fifth years, respectively, and \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year.

Term of Phosphate Lease—Readjustment.

Leases shall be for indeterminate periods upon condition of a minimum annual production, except when operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions shall be made as the Secretary of the Interior shall determine unless otherwise provided by law at the time of the expiration of such periods:

Suspension of work.

Provided, That the Secretary of the Interior may permit suspension of operation under such lease for not exceeding twelve months at any one time when market conditions are such that the lease cannot be operated except at a loss.

Surface Rights of Phosphate Lease—Millsite.

SEC. 12. That any qualified applicant to whom the Secretary of the Interior may grant a lease to develop and extract phosphates, or phosphate rock, under the provisions of this Act shall have the right to use so much of the surface of unappropriated

and unentered lands, not exceeding forty acres, as may be determined by the Secretary of the Interior to be necessary for the proper prospecting for or development, extraction, treatment, and removal of such mineral deposits.

OIL & GAS.

Prospecting Permit, 2560 Acres, Outside of Known Geological Structure.

SEC. 13. That the Secretary of the Interior is hereby authorized, under such necessary and proper rules and regulations as he may prescribe, to grant to any applicant qualified under this Act a prospecting permit, which shall give the exclusive right, for a period not exceeding two years, to prospect for oil or gas upon not to exceed two thousand five hundred and sixty acres of land wherein such deposits belong to the United States and are not within any known geological structure of a producing oil or gas field

Drill within Six months. Sink 500 Feet and 2000 Feet.

Upon condition that the permittee shall begin drilling operations within six months from the date of the permit, and shall, within one year from and after the date of permit, drill one or more wells for oil or gas to a depth of not less than five hundred feet each, unless valuable deposits of oil or gas shall be sooner discovered, and shall, within two years from date of the permit, drill for oil or gas to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered.

Two Years Extension.

The Secretary of the Interior may, if he shall find that the permittee has been unable with the exercise of diligence to test the land in the time granted by the permit, extend any such permit for such time, not exceeding two years, and upon such conditions as he shall prescribe.

Shape of Claim.

Whether the lands sought in any such application and permit are surveyed or unsurveyed the applicant shall, prior to filing his application for permit, locate such lands in a reasonably compact form and according to the legal subdivisions of the public land surveys if the land be surveyed; and in an approximately square or rectangular tract if the land be an unsurveyed tract, the length of which shall not exceed two and one-half times its width,

Monument and Notice.

And if he shall cause to be erected upon the land for which a permit is sought a monument not less than four feet high, at some conspicuous place thereon, and shall post a notice in writing on or near said monument, stating that an application for permit will be made within thirty days after date of posting said notice, the name of the applicant, the date of the notice, and such a general description of the land to be covered by such permit by reference to courses and distances from such monument and such other natural objects and permanent monuments as will reasonably identify the land, stating the amount thereof in acres,

30 Days Preference Right.

He shall during the period of thirty days following such marking and posting, be entitled to a preference right over others to a permit for the land so identified.

Staking Corners—Additional Notice.

The applicant shall, within ninety days after receiving a permit, mark each of the corners of the tract described in the permit upon the ground with substantial monuments, so that the boundaries can be readily traced on the ground, and shall post in a conspicuous place upon the lands a notice that such permit has been granted and a description of the lands covered thereby:

Permits and Preference Rights in Alaska.

Provided, That in the Territory of Alaska prospecting permits not more than five in number may be granted to any qualified applicant for periods not exceeding four years, actual drilling operations shall begin within two years from date of permit, and oil and gas wells shall be drilled to a depth of not less than five hundred feet, unless valuable deposits of oil or gas shall be sooner discovered, within three years from date of the permit and to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered, within four years from date of permit: *Provided further*, That in said Territory the applicant shall have a preference right over others to a permit for land identified by temporary monuments and notice posted on or near the same for six months following such marking and posting, and upon receiving a permit he shall mark the corners of the tract described in the permit upon the ground with substantial monuments within one year after receiving such permit.

Lease of One Fourth to Permittee.

SEC. 14. That upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit:

Minimum Limit 160 Acres—Surveys.

Provided, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee, shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover

expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives.

Term Twenty Years on 5 per cent Royalty, \$1 per Acre Advance.

Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of \$1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, with the right of renewal as prescribed in section 17 hereof.

Preference Right to the Other Three Fourths.

The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than $12\frac{1}{2}$ per centum in amount or value of the production, and under such other conditions as are fixed for oil or gas leases in this Act, the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe; *Provided*, That the Secretary shall have the right to reject any or all bids.

Twenty per cent Royalty until Lease Is Applied For.

SEC. 15. That until the permittee shall apply for lease to the one quarter of the permit area heretofore provided for he shall pay to the United States 20 per centum of the gross value of all oil or gas secured by him from the lands embraced within his permit and sold or otherwise disposed of or held by him for sale or other disposition.

Two Hundred Feet Protection Limit—Prevention of Waste.

SEC. 16. That all permits and leases of lands containing oil or gas, made or issued under the provisions of this Act, shall be subject to the condition that no wells shall be drilled within two hundred feet of any of the outer boundaries of the lands so

permitted or leased, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners, and to the further condition that the permittee or lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by him to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits.

Forfeiture Enforced by Court.

Violations of the provisions of this section shall constitute grounds for the forfeiture of the permit or lease, to be enforced through appropriate proceedings in Courts of competent jurisdiction.

Land Within the Geologic Structure to Go to Highest Bidder.

SEC. 17. That all unappropriated deposits of oil or gas situated within the known geologic structure of a producing oil or gas field and the unentered lands containing the same, not subject to preferential lease, may be leased by the Secretary of the Interior to the highest responsible bidder by competitive bidding under general regulations to qualified applicants in areas not exceeding six hundred and forty acres and in tracts which shall not exceed in length two and one-half times their width,

Bonus—Minimum Royalty $12\frac{1}{2}$ per cent. Advance Rental.

Such leases to be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease, which shall not be less than $12\frac{1}{2}$ per centum in amount or value of the production, and the payment in advance of a rental of not less than \$1 per acre per annum thereafter during the continuance of the lease, the rental paid for any one year to be credited against the royalties as they accrue for that year.

Term Twenty Years. Renewals.

Leases shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods.

Reduction of Royalty.

Whenever the average daily production of any oil well shall not exceed ten barrels per day, the Secretary of the Interior is authorized to reduce the royalty on future production when in his judgment the wells cannot be successfully operated upon the royalty fixed in the lease. The provisions of this paragraph shall apply to all oil and gas leases made under this Act.

Leases on Land Withdrawn under the Proclamation.

SEC. 18. That upon relinquishment to the United States, filed in the General Land Office within six months after the approval of this Act, of all right, title, and interest claimed and possessed prior to July 3, 1910, and continuously since by the claimant or his predecessor in interest under the pre-existing placer mining law to any oil or gas bearing land upon which there has been drilled one or more oil or gas wells to discovery embraced in the executive order of withdrawal issued September 27, 1909, and not within any naval petroleum reserve,

Royalty on Such Lease.

And upon payment as royalty to the United States of an amount equal to the value at the time of production of one-eighth of all the oil or gas already produced except oil or gas used for production purposes on the claim, or unavoidably lost, from such land, the claimant, or his successor, if in possession of such land, undisputed by any other claimant prior to July 1, 1919, shall be entitled to a lease thereon from the United States for a period of twenty years, at a royalty of not less than $12\frac{1}{2}$ per centum

of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost:

Limit of Area of Such Lease.

Provided, That not more than one-half of the area, but in no case to exceed three thousand two hundred acres, within the geologic oil or gas structure of a producing oil or gas field shall be leased to any one claimant under the provision of this section when the area of such geologic oil structure exceeds six hundred and forty acres. Any claimant or his successor, subject to this limitation, shall, however, have the right to select and receive the lease as in this section provided for that portion of his claim or claims equal to, but not in excess of, said one-half of the area of such geologic oil structure, but not more than three thousand two hundred acres.

Secretary to Fix Royalty on Such Lease.

All such leases shall be made and the amount of royalty to be paid for oil and gas produced, except oil or gas used for production purposes on the claim, or unavoidably lost, after the execution of such lease shall be fixed by the Secretary of the Interior under appropriate rules and regulations:

Lease on Naval Reserve. Protection Limit 660 Feet.

Provided, however, That as to all like claims situate within any naval petroleum reserve the producing wells thereon only shall be leased, together with an area of land sufficient for the operation thereof, upon the terms and payment of royalties for past and future production as herein provided for in the leasing of claims. No wells shall be drilled in the land subject to this provision within six hundred and sixty feet of any such leased well without the consent of the lessee:

Idem. Preference Right.

Provided, however, That the President may, in his discretion, lease the remainder or any part of any such claim upon which

such wells have been drilled, and in the event of such leasing said claimant or his successor shall have a preference right to such lease:

Drilling within the Protection Limit.

And provided further, That he may permit the drilling of additional wells by the claimant or his successor within the limited area of six hundred and sixty feet theretofore provided for upon such terms and conditions as he may prescribe.

Fraud.

No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

Adjustment of Suits.

Upon the delivery and acceptance of the lease, as in this section provided, all suits brought by the government affecting such lands may be settled and adjusted in accordance herewith and all moneys impounded in such suits or under the Act entitled "an Act to amend an Act entitled 'an Act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest,' approved March 2, 1911," approved August 25, 1914 (Thirty-eighth Statutes at Large, page 708), shall be paid over to the parties entitled thereto.

Land Claimed by Two Parties.

In case of conflicting claimants for leases under this section, the Secretary of the Interior is authorized to grant leases to one or more of them as shall be deemed just. All leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear, subject, however, to the same limitation

as to area and acreage as is provided for claimant in this section:

Assigns Since Sept. 1, 1919. Exchange of Lands before Jan. 1, 1920.

Provided, That no claimant acquiring any interest in such lands since September 1, 1919, from a claimant on or since said date claiming or holding more than the maximum allowed claimant under this section shall secure a lease thereon or any interest therein, but the inhibition of this proviso shall not apply to an exchange of any interest in such lands made prior to the 1st day of January, 1920, which did not increase or reduce the area or acreage held or claimed in excess of said maximum by either party to the exchange:

Maximum Acreage.

Provided further, That no lease or leases under this section shall be granted, nor shall any interest therein, inure to any person, association, or corporation for a greater aggregate area or acreage than the maximum in this section provided for.

Authority to Settle Suits.

SEC. 18a. That whenever the validity of any gas or petroleum placer claim under pre-existing law to land embraced in the Executive order of withdrawal issued September 27, 1909, has been or may hereafter be drawn in question on behalf of the United States in any departmental or judicial proceedings, the President is hereby authorized at any time within twelve months after the approval of this Act to direct the compromise and settlement of any such controversy upon such terms and conditions as may be agreed upon, to be carried out by an exchange or division of land or division of the proceeds of operation.

Certain Claims Having No Discovery Allowed Six Months to Come in Under this Act.

SEC. 19. That any person who on October 1, 1919, was a bona

fide occupant or claimant of oil or gas lands under a claim initiated while such lands were not withdrawn from oil or gas location and entry, and who had previously performed all acts under then existing laws necessary to valid locations thereof except to make discovery, and upon which discovery had not been made prior to the passage of this Act, and who has performed work or expended on or for the benefit of such locations an amount equal in the aggregate of \$250 for each location if application therefor shall be made within six months from the passage of this Act shall be entitled to prospecting permits thereon upon the same terms and conditions, and limitations as to acreage, as other permits provided for in this Act,

Claims Having a Discovery Entitled to Lease.

Or where any such person has heretofore made such discovery, he shall be entitled to a lease thereon under such terms as the Secretary of the Interior may prescribe unless otherwise provided for in section 18 hereof:

Royalty of Leases under Last Paragraph Above.

Provided, That where such prospecting permit is granted upon land within any known geologic structure of a producing oil or gas field, the royalty to be fixed in any lease thereafter granted thereon or any portion thereof shall be not less than $12\frac{1}{2}$ per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost:

Navy Reserves Excepted.

Provided, however, That the provisions of this section shall not apply to lands reserved for the use of the navy:

Fraud.

Provided, however, That no claimant for a permit or lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly

and in good faith, shall be entitled to any of the benefits of this section.

Legal Representatives.

All permits or leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear.

Permits or Leases on Land where Surface and Mineral Have Been Severed—Railroad Grants Excepted.

SEC. 20. In the case of lands bona fide entered as agricultural, and not withdrawn or classified as mineral at the time of entry, but not including lands claimed under any railroad grant, the entryman or patentee, or assigns, where assignment was made prior to January 1, 1918, if the entry has been patented with the mineral right reserved, shall be entitled to a preference right to a permit and to a lease, as herein provided, in case of discovery.

Such Severed Holdings May Combine.

And within an area not greater than a township such entryman and patentees, or assigns holding restricted patents may combine their holdings, not to exceed two thousand five hundred and sixty acres for the purpose of making joint application. Leases executed under this section and embracing only lands so entered shall provide for the payment of a royalty of not less than $12\frac{1}{2}$ per centum as to such areas within the permit as may not be included within the discovery lease to which the permittee is entitled under section 14 hereof.

Oil Shale Leases—Royalty. Acreage Rent. 5120 Acres Limit. Readjustment.

OIL SHALE.

SEC. 21. That the Secretary of the Interior is hereby authorized to lease to any person or corporation qualified under this Act any deposits of oil shale belonging to the United States and the surface of so much of the public lands containing such de-

posits, or land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, under such rules and regulations, not inconsistent with this Act, as he may prescribe; that no lease hereunder shall exceed five thousand one hundred and twenty acres of land, to be described by the legal subdivisions of the public-land surveys, or if unsurveyed, to be surveyed by the United States, at the expense of the applicant, in accordance with regulations to be prescribed by the Secretary of the Interior. Leases may be for indeterminate periods, upon such conditions as may be imposed by the Secretary of the Interior, including covenants relative to methods of mining, prevention of waste, and productive development. For the privilege of mining, extracting, and disposing of the oil or other minerals covered by a lease under this section the lessee shall pay to the United States such royalties as shall be specified in the lease and an annual rental, payable at the beginning of each year, at the rate of 50 cents per acre per annum, for the lands included in the lease, the rental paid for any one year to be credited against the royalties accruing for that year; such royalties to be subject to readjustment at the end of each twenty-year period by the Secretary of the Interior:

Waiver of Rent and Royalty.

Provided, That for the purpose of encouraging the production of petroleum products from shales the Secretary may, in his discretion, waive the payment of any royalty and rental during the first five years of any lease:

Oil Shale Locations May Relinquish and Come under the Act.

Provided, That any person having a valid claim to such minerals under existing laws on January 1, 1919, shall, upon the relinquishment of such claim, be entitled to a lease under the provisions of this section for such area of the land relinquished as shall not exceed the maximum area authorized by this section to be leased to an individual or corporation:

Fraud.

Provided, however, That no claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section:

Only One Lease Under this Section.

Provided further, That not more than one lease shall be granted under this section to any one person, association, or corporation.

ALASKA OIL PROVISIO.**Claims without Discovery in Alaska.**

SEC. 22. That any bona fide occupant or claimant of oil or gas bearing lands in the Territory of Alaska, who, or whose predecessors in interest, prior to withdrawal had complied otherwise with the requirements of the mining laws, but had made no discovery of oil or gas in wells and who prior to withdrawal had made substantial improvements for the discovery of oil or gas on or for each location or had prior to the passage of this Act expended not less than \$250 in improvements on or for each location shall be entitled, upon relinquishment or surrender to the United States within one year from the date of this Act, or within six months after final denial or withdrawal of application for patent, to a prospecting permit or permits, lease or leases, under this Act covering such lands, not exceeding five permits or leases in number and not exceeding an aggregate of one thousand two hundred and eighty acres in each:

Alaska Readjustment. Waiver of Rent and Royalty.

Provided, That leases in Alaska under this Act whether as a result of prospecting permits or otherwise shall be upon such rental and royalties as shall be fixed by the Secretary of the Interior and specified in the lease, and be subject to readjustment at the end of each twenty-year period of the lease: *Provided*

further, That for the purpose of encouraging the production of petroleum products in Alaska the Secretary may, in his discretion, waive the payment of any rental or royalty not exceeding the first five years of any lease.

Alaska. Fraud.

No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

SODIUM AND BORAX.

Two Year Permits to Sodium and Borax Claimants.

SEC. 23. That the Secretary of the Interior is hereby authorized and directed, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium dissolved in and soluble in water, and accumulated by concentration, in lands belonging to the United States for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall be not exceeding two thousand five hundred and sixty acres of land in reasonably compact form:

San Bernardino County Excepted.

Provided further, That the provisions of this act shall not apply to lands in San Bernardino County, California.

Leases to Sodium and Borax Permittees.

SEC. 24. That upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in section 23 hereof has been discovered by the permittee within the area covered by his permit and that such land is chiefly valuable therefor the permittee shall be entitled to a lease for one-half of the land embraced in the prospect-

ing permit, at a royalty of not less than one-eighth of the amount or value of the production, to be taken and described by legal subdivisions of the public-land surveys, or if the land be not surveyed by survey executed at the cost of the permittee in accordance with the rules and regulations to be prescribed by the Secretary of the Interior. The permittee shall also have the preference right to lease the remainder of the lands embraced within the limits of his permit at a royalty of not less than one-eighth of the amount or value of the production to be fixed by the Secretary of the Interior. Lands known to contain such valuable deposits as are enumerated in section 23 hereof and not covered by permits or leases, except such lands as are situated in said county of San Bernardino, shall be held subject to lease, and may be leased by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres; all leases to be conditioned upon the payment by the lessee of such royalty of not less than one-eighth of the amount or value of the production as may be fixed in the lease, and the payment in advance of a rental of 50 cents per acre for the first calendar year or fraction thereof and \$1 per acre per annum thereafter during the continuance of the lease, the rental paid for any one year to be credited on the royalty for that year. Leases may be for indeterminate periods, subject to readjustment at the end of each twenty-year period, upon such conditions not inconsistent herewith as may be incorporated in each lease or prescribed in general regulation theretofore issued by the Secretary of the Interior, including covenants relative to mining methods, waste, period of preliminary development, and minimum production, and a lessee under this section may be lessee of the remaining lands in his permit.

40 Acre Mill Site Privileges to Sodium Claims.

SEC. 25. That in addition to areas of such mineral land which may be included in any such prospecting permits or leases, the Secretary of the Interior, in his discretion, may grant to a

permittee or lessee of lands containing sodium deposits, and subject to the payment of an annual rental of not less than 25 cents per acre, the exclusive right to use, during the life of the permit or lease, a tract of unoccupied nonmineral public land, not exceeding forty acres in area, for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

GENERAL PROVISIONS APPLICABLE TO COAL, PHOSPHATE, SODIUM, OIL,
OIL SHALE, AND GAS LEASES.

Power to Cancel Prospecting Permits.

SEC. 26. That the Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of this Act appropriate provisions for its cancellation by him.

Limitation on Number of Leases.

SEC. 27. That no person, association, or corporation, except as herein provided, shall take or hold more than one coal, phosphate, or sodium lease during the life of such lease in any one State; no person, association, or corporation shall take or hold, at one time, more than three oil or gas leases granted hereunder in any one State, and not more than one lease within the geologic structure of the same producing oil or gas field.

Limitations on Corporate Holdings.

No corporation shall hold any interest as a stockholder of another corporation in more than such number of leases; and no person or corporation shall take or hold any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, which, together with the area embraced in any direct holding of a lease under this Act, or which, together with

any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, for any kind of mineral leased hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee under this Act.

Forfeiture to U. S. May Be Ordered by Court.

Any interests held in violation of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the district in which the property, or some part thereof, is located, except that any ownership or interest forbidden in this Act which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition:

Refinery, Pipe Line and Railroad Combinations.

Provided, That nothing herein contained shall be construed to limit sections 18, 18a, 19, and 22 or to prevent any number of lessees under the provisions of this Act from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under this Act, or the transportation of coal:

Such Combination must be Approved.

Provided further, That any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same:

Trust or Conspiracy Ground for Decree of Forfeiture.

And provided further, That if any of the lands or deposits

leased under the provisions of this Act shall be subleased, trusteeed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form part of, or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control, in excess of the amounts of lands provided in this Act, the lease thereof shall be forfeited by appropriate Court proceedings.

Rights of Way to Pipe Line Common Carriers.

SEC. 28. That rights of way through the public lands, including the forest reserves, of the United States are hereby granted for pipe-line purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of this Act, to the extent of the ground occupied by the said pipe line and twenty-five feet on each side of the same under such regulations as to survey, location, application, and use as may be prescribed by the Secretary of the Interior and upon the express condition that such pipe lines shall be constructed, operated, and maintained as common carriers:

Pipe Lines May Not Discriminate. Oil Lease Must Cover this Point.

Provided, That the government shall in express terms reserve and shall provide in every lease of oil lands hereunder that the lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the government

or of any citizen or company not the owner of any pipe line, operating a lease or purchasing gas or oil under the provisions of this Act:

Forfeiture by Decree for Breach by Pipe Line.

Provided further, That no right of way shall hereafter be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and conditions of this section. Failure to comply with the provisions of this section or the regulations prescribed by the Secretary of the Interior shall be ground for forfeiture of the grant by the United States District Court for the district in which the property, or some part thereof, is located in an appropriate proceeding.

Leases and Permits Subject to Easements.

SEC. 29. That any permit, lease, occupation, or use permitted under this Act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act, and the treatment and shipment of the products thereof by or under authority of the government, its lessees, or permittees, and for other public purposes:

Easements and Surface Right May Be Reserved. Permits for Easements.

Provided, That said Secretary, in his discretion, in making any lease under this Act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided further,* That if such reservation is made it shall be so determined before the offering of such lease: *And provided*

further, That the said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved.

Assigning and Subletting without Permission Forbidden.

SEC. 30. That no lease issued under the authority of this Act shall be assigned or sublet, except with the consent of the Secretary of the Interior.

Lessee May Surrender.

The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease.

Certain Terms to Be Expressed in Leases. To Prevent Waste. 8 Hour Day. Wages Bimonthly. Measuring Coal.

Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner.

Miscellaneous Covenants.

And such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare:

State Laws to Be Respected.

Provided, That none of such provisions shall be in conflict with the laws of the State in which the leased property is situated.

Court May Cancel Lease or Allow Damages or Other Relief.

SEC. 31. That any lease issued under the provisions of this Act may be forfeited and canceled by an appropriate proceeding in the United States District Court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of this Act, of the lease, or of the general regulations promulgated under this Act and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof.

Secretary of Interior to Prescribe Rules and Regulations.

SEC. 32. That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this Act:

Police Power and Taxes.

Provided. That nothing in this Act shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or

other rights, property, or assets of any lessee of the United States.

Papers to Be Verified.

SEC. 33. That all statements, representations, or reports required by the Secretary of the Interior under this Act shall be upon oath, unless otherwise specified by him, and in such form and upon such blanks as the Secretary of the Interior may require.

The Act Applies where Surface and Mineral Rights Have Been Severed.

SEC. 34. That the provisions of this Act shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits.

Distribution of Royalties.

SEC. 35. That 10 per centum of all money received from sales, bonuses, royalties, and rentals under the provisions of this Act, excepting those from Alaska, shall be paid into the Treasury of the United States and credited to miscellaneous receipts; for past production 70 per centum, and for future production $52\frac{1}{2}$ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress, known as the Reclamation Act, approved June 17, 1902, and for past production 20 per centum, and for future production $37\frac{1}{2}$ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the

support of public schools or other public educational institutions, as the legislature of the State may direct: *Provided,*

Naval Reserve Receipts, How Deposited.

That all moneys which may accrue to the United States under the provisions of this Act from lands within the naval petroleum reserves shall be deposited in the Treasury as "Miscellaneous receipts."

Payment of Royalty in Kind.

SEC. 36. That all royalty accruing to the United States under any oil or gas lease or permit under this Act on demand of the Secretary of the Interior shall be paid in oil or gas.

Secretary May Sell Oil and Gas Royalty.

Upon granting any oil or gas lease under this Act, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil and gas accruing or reserved to the United States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee:

Private Sale of Royalty.

Provided, however, That pending the making of a permanent

contract for the sale of any royalty, oil or gas as herein provided, the Secretary of the Interior may sell the current product at private sale, at not less than the market price:

Departmental Pre-emption Right to Royalty.

And provided further, That any royalty, oil, or gas may be sold at not less than the market price at private sale to any department or agency of the United States.

All Locations before Passage of Act Protected with Right to Perfect Discovery.

SEC. 37. That the deposits of coal, phosphate, sodium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits described in the joint resolution entitled¹ "Joint resolution authorizing the Secretary of the Interior to permit the continuation of coal mining operations on certain lands in Wyoming," approved August 1, 1912 (Thirty-seventh Statutes at Large, page 1346), shall be subject to disposition only in the form and manner provided in this Act, except as to valid claims existent at date of passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

Fees and Commissions to Land Officers.

SEC. 38. That, until otherwise provided, the Secretary of the Interior shall be authorized to prescribe fees and commissions to be paid registers and receivers of United States land offices on account of business transacted under the provisions of this Act.

Approved, February 25, 1920.

¹ This joint resolution refers to coal entries numbers 18 to 49 by the Owl Creek Coal Company in the Land Office at Lander, Wyoming.

ANALYSIS OF THE ACT.

Section 1.

Minerals and Territory Covered. Helium.

The Act is confined to coal, phosphate, sodium, oil, oil shale and gas lands. Helium is reserved to the United States. It applies to claims of right to such minerals anywhere on the unoccupied Public Domain including National Forests.

Exclusions.

It Excludes:

1. National Parks.
2. Military and Naval Reserves.
3. Lands Segregated under the Appalachian Act mentioned in Sec. 1, which refers to certain parks.
4. Indian Lands, by implication. See page 262.

Parties.

The parties entitled to the benefits of the Act are:

1. Citizens.
2. Associations of citizens.
3. Corporations organized under laws of the United States or of any State or Territory.
4. Municipal Corporations limited to coal, oil, oil shale and gas.

Reciprocity.

An attempt is made to forestall the acquisition of oil interests by alien citizens of countries whose laws do not confer like privileges on citizens of this country.

Sections 2-8

Are the only part of the Act which is confined to coal. But this mineral is included in the general provisions of sections

26-37 which are applicable to all the leases and permits covered by the Act.

The Act repeals by implication all the Statutes allowing purchase of coal land and brings such land under the leasing system.

Alaska coal is expressly excluded because covered by special law printed in chap. 86, and coal applications pending which have become vested rights may be advanced to patent.

Sections 9-12.

These four sections are confined to Phosphates which have no special mention elsewhere in the Act.

Phosphates are mentioned in the withdrawal Act of 1911, 36 St. L. 847. By this Act prospecting for phosphates ceased to be legal. They were not released by the amendment of 1912, 37 St. L. 497. By Act of 1915, 38 St. L. 792, agricultural entries were allowed excepting phosphates and other minerals. All these Statutes seem to have no future application as the phosphate lands come under the experiment of the leasing system.

Sections 13-17.

These are the five sections confined to oil and gas. The general provisions, sections 26-37 of course cover them when pertinent.

Sections 13 to 16 are restricted to claims outside the known geological structure and section 17 is limited to claims within the known geological structure.

Oil, the principal mineral, the importance of which was the inducement to passage of this Leasing Act, was the subject of several Acts of Congress which are enumerated on page 224. Practically, oil claims were treated merely as a form of placer locations.

The Act at the outstart divides the public domain into two divisions;

- (1) Where the oil is found in a known geological structure;

(2) Where found elsewhere, that is, in territory not previously developed or proved up.

When oil is sought on land outside the known geological structure, the procedure is to post notice on the claim and apply for a permit to work it. If this permit results in finding pay oil the permittee obtains a lease at a small royalty on one fourth of the ground and the other three-fourths are advertised for competition bids; the original permittee having no special privileges on this three quarters, except, that if no other bid exceeds his own, he has a pre-emption right to become the lessee. Unless he exercises such right these three-fourths are let to the highest bidder.

Section 13

Prescribes the conditions upon which preference rights, permits, and leases will be granted upon the undeveloped oil lands.

Section 14

Enlarges upon the same ground partly covered by 13, giving the procedure to obtain lease after the permittee has been allowed the right to a lease. It gives the term of the lease on one fourth of the land and describes the permittee's limited rights to a preference on the other three fourths.

Section 15

Merely provides for a twenty per cent. royalty on the oil or gas produced during the interval between the first strike of mineral and the date of the permittee's application for a lease for his one fourth.

Section 16

Provides for a protection of 200 feet and for precautions to prevent waste.

Section 17

Is the only section confined to procedure to obtain a lease on ground within the known geological structure.

Oil Land Within the Known Geological Structure.

On this land no permits are granted. They are to be divided into tracts not exceeding 640 acres and advertised for lease to the highest bidder. The royalty is to be fixed in the advertisement. As no oil is supposed to have been tapped on any such tract, the fixing of the royalty must be therefore more or less arbitrary. The acreage rent has also at this point become a fixed amount. As both royalty and rent are already determined the competition will be on the bonus bid; whoever offers the highest bonus becomes the lessee.

Section 18

Is confined to claimants of wells covered by the withdrawal proclamation of September 27, 1909, where oil had been discovered since that date and whose locations would have been valid vested rights except for the want of discovery at the proper time. The condonation as to time of discovery opens them to lease to the extent of one half of the area but with no protection as to minimum royalty.

Upon acceptance of a lease under its terms, suits already brought by the Government are to be settled in compliance with the Act of 1914 which it cites, and the impounded royalties released.

Included in the section are the repetition of the fraud clause and limitations as to acreage with no less than six provisos, arranged with no conformity to any orderly sequence.

This section is confined to a class of claims but few in number, some of them, however, doubtless of great value, whose owners were ready to comply and did promptly comply with the requirements within the six months period. And if no application was made under this section we do not apprehend that they lost any rights which they might have under other provisions of the Act.

Section 18A.

Section 18a is confined to the settlement of certain Government suits, involving claims on the area covered by the Proclamation and authorizes their compromise within one year by exchange or division of land, or its proceeds. It is supplemental to the Act of August 25, 1914 which was restricted to the oil product and did not cover the title to the real estate. There can be but few claims affected by this section and the necessity for the section seems difficult to understand unless it was to bring in Presidential approval to the compromise of such a controversy.

Section 19

Covers the instance where the claimant:

1. Had a bona fide occupancy on October 1, 1919.
2. On a claim initiated before the land was withdrawn.
3. Valid except as to discovery.
4. And no discovery prior to the passage of the Act.
5. And who had expended \$250 on each location.

Such claimant is allowed a prospecting permit on application filed within six months. Where such claimant had a discovery before the passage of the Act he is entitled to a lease.

The first class of beneficiaries under the section are allowed a permit because they have as yet no discovery.

The second class who have a discovery, but a discovery too late to give them a vested title, are under this section allowed to apply for a lease at not less than twelve and a half per cent. royalty. The benefit of the section to this second class seems to be to relieve them from paying any bonus but they have no protection against the imposition of a heavy royalty.

And the six months limitation does not seem to apply to this second class, although a construction to the contrary might possibly be forced.

Section 20

Gives a preference right to a permit and to a lease to the holders of the agricultural or surface title. That appears to

be its only scope. The assignee "where assignment was made prior to January 1, 1918" comes under the section. We do not know why this date of January 1, 1918, was fixed. Apparently the original patentee of the surface has this preference right indefinitely but his assigns, under assignment later than that date, would not have the right if the terms of the section are closely construed.

The general terms of Section 34 as to severed lands (where surface has been patented reserving the minerals) would doubtless be qualified by this section 20 referring specially to this class of lands.

Section 21.

Oil Shale was placer ground before the Act but is now for the first time mentioned in terms and made a class by itself.

This oil shale section is peculiar and requires consideration in connection with the construction which the Department places upon it. We have no hesitation in stating that oil shale claims, regular in every respect, were just as valid as any other form of placer location.

The language of the oil placer Act is:

"That any person may enter and obtain patent to lands containing petroleum or other mineral oil and chiefly valuable therefor, under the provisions of the laws relating to Placer Mineral Claims," Act of 1897, 29 Stat. L. 526.

And the Act of 1903, 32 St. L. 825, concerning annual labor on oil placers speaks of "Oil Lands" and "oil bearing character" expressions which refer as clearly to shale as they do to liquid oil.

It is true that Oil Shale Claims as such, were not generally known when those Acts were passed, but they come within both the letter and the spirit of the Statutes and conform to the generally accepted construction of the same.

The construction of this section as to the beneficiaries under it (Oil Shale Regulation 7) in using the words "honest belief" implies a doubt as to their being locatable which the Statutes do not justify, and they are recognized by name both in the title of the 1920 Act and in its Saving Section 37.

The same regulation speaks of lode locations on Shale. Although not common, some shale records are sound in the form of lode locations and in fact shale has much in its mode of deposition to suggest a lode location. It is in place in solid rock and has small resemblance to a placer deposit of gold bearing gravel.

It would come within the definition of a lode in *U. S. v. Ohio Oil Co.*, 240 Fed. 996 and in *San Francisco Chemical Co. v. Duffield*, 201 Fed. 830. In *Webb v. American Asphaltum M. Co.*, 157 Fed. 203, it is held that Lode claims are not confined to metaliferous deposits. If it were not for the wording of the Statutes quoted it would be difficult to say that a shale bed should not be located as a Lode.

Under the above construction, whether lode or placer may not often be material, but we never could see the necessity for holding in any class of claims that a location of a placer as a lode should be a fatal error. And after patent it has been held to be valid beyond question. *Peabody M. Co. v. Gold Hill M. Co.*, 111 Fed. 817, 49 C. C. A. 637, 21 M. R. 591.

A ruling of May 19, 1920, *in re Verner Z. Reed*, — L. D. —, Land Service Bulletin for June 1920, page 50, recites the previous holdings of the Department on oil shale and concludes with the following specific affirmance of the validity of placer locations on Oil Shale Deposits:

"Oil shale having been thus recognized by the Department and by Congress as a mineral deposit and a source of petroleum, and having been demonstrated elsewhere to be a material of economic importance, lands valuable on account thereof must be held to have been subject to valid location and appropriation under the placer mining laws, to the same extent and subject to the same provisions and condition as if valuable on account of oil or gas. Entries and applications for patent for oil shale placer claims will, therefore, be adjudicated by your office in accordance with the same legal provisions and with reference to the same requirements and limitation as are applicable to oil and gas placers."

Section 22

Is the only section which is confined to Alaska but the Territory is mentioned in Sections 2, 13 and 35. In sections 2, to exclude it entirely from the coal leases; in section 13 to allow prospecting permits in that Territory and in section 35 as to the disposition of the income received under the Act, from Alaska.

Sections 23-25

Bring sodium compounds under the lease system. Sodium compounds include borax and some of its combinations exist of commercial value in solution in water. The sections above mentioned provide for prospecting permits for two years to be followed by leases on one-half the ground covered by the permit at a minimum royalty of $\frac{1}{8}$. A forty acre sodium mill site is also allowed.

Section 26

Gives the Secretary of the Interior the power to cancel the prospecting permit on any form of mineral for want of diligence but no such authority is granted to cancel the lease and apparently this is the only cancellation allowed by the Act without judicial decree.

Section 27

Limits the number of leases on coal, phosphates, sodium, oil or gas and attempts to limit corporate holdings, with provisions to allow of combinations for refineries, pipe lines or railroads under certain limitations.

Section 28

Is confined to pipe lines and other easements.

Section 29

Makes all leases and permits subject to the reserved easements, provides for the joint use of easements and allows second leases

to be superimposed on the original lease with the material proviso that in such case the right to make such super-lease must have been determined before the offering of the original lease.

Section 30.

Sub-leases and assignments are forbidden by this section except by consent of the Secretary. Surrender, in the section styled "Relinquishment," is provided for under like consent which right of surrender "by consent" is implied in every contract in the nature of things. The section further prescribes certain clauses to protect workmen and to prevent waste and other precautionary clauses which are embodied in the printed form contained in the regulations.

The power of the Secretary of the Interior to make rules and regulations is mentioned in nineteen out of the thirty-eight sections of the Act.

Section 32 gives the general power "to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act."

Under section 2, the Secretary may by general regulations prescribe the mode of offering coal lands for leasing and by section 8 he may prescribe regulations in advance for the limited licenses for free coal.

Under section 9, he is authorized to lease phosphate lands by any methods which he may, by general regulation adopt. he may also prescribe regulations for the survey of phosphate ground and by section 11 may prescribe the conditions of the readjustment of phosphate leases.

Under section 13, he may prescribe rules for oil and gas permits upon undeveloped fields. By section 14 he may prescribe regulations for the survey of such lands and fix by regulation how the royalty is to be determined on the lease.

He may prescribe under section 17 general regulations for the competitive bidding of the oil blocks on the known geological structure and for renewals under that section.

Under section 18 he may prescribe regulations to fix the royalty on oil and gas leases. And by section 19 prescribe terms of lease under that section.

Under section 21 he may prescribe rules "not inconsistent with this Act" for the disposition of oil shale land and the reduction of the leased mineral.

Under section 22 he may fix the rents and royalties in Alaska oil leases.

Under sections 23 and 24 he may prescribe regulations for permits on sodium claims and for the survey of such claims and to regulate the granting of permits or leases on such claims and their readjustment and the covenants in sodium leases.

By sections 28 and 29 he may prescribe regulations as to the grant of pipe line easements and in any lease under the Act, if any surface reservations are made, it must be determined before the offering of the lease.

Under section 30, he may make general rules for the safety provisions of the lease to protect miners in their persons and their dues, with a sweeping clause "for the protection of the interests of the United States, for the prevention of monopoly and the safeguarding of the public welfare."

In section 31 where provisions are made for the cancellation of the lease by decree of court for breaches generally, where regulations are mentioned, they must be "in force at the date of the lease" which by implication prohibits the promulgation of any retroactive regulations. This clause assimilates the law to the decisions concerning by-laws of corporations which are not allowed to be retroactive.

Section 31

After calling for judicial proceedings to set aside a lease in a later clause allows the lease to "provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof."

The two inconsistent remedies thus provided for bring up the question as to the extent to which the Interior Department may take *ex parte* action against the lessee and we cannot assume that the latter provision extends further than to provide for arbitration or for suit for damages; certainly the cancellation of the lease is limited to judicial decree only. It will be noted that Section 26 allows the Secretary to cancel a permit for

violation of its terms but this power is not allowed to cancel a lease which must be by decree of court. Paragraph No. 6 of the form of lease printed with the regulations is apparently drawn so as not to concede this point. But if the Secretary is allowed by his own ruling to cancel the lease all legal protection to the lessee is practically gone.

In the passage of the bill two conflicting interests were at work; one contending for absolute authority of the department to control and dispose of the oil lands without judicial restraint. The other contended for judicial protection to the oil claimant; and on this point of cancellation and on several other points scattered through the Act the authority of the Courts is maintained.

Section 32

Authorizes in broad and general terms the promulgation of rules and regulations. It further provides for the determination of the boundary lines of the gas fields mentioned in the oil sections of the Act and recognizes the police power of the States and the taxing power.

Land Office Regulations.

The predominant feature of the whole Act is the practical surrender of the oil domain to the Regulations of the Interior Department. These control the permits and the leases and all details and the department retains general superintendence during the lifetime of the lease.

Sections 33-36.

Section 33 provides for verifications, forms and blanks. Section 35 covers the distribution of royalties and section 36 provides for the payment of royalties in kind and also for the sale of the royalty as a separate interest. Section 34, a sweeping provision for surface severance, is necessarily controlled by section 20 as above mentioned under that section.

Section 37.

Saving Clause. Future Discovery Allowed.

This is perhaps the most material section of the Act as it saves the rights of claims of all sorts held by valid location before the passage of the Act and also gives the right to oil claims valid in other respects to perfect their title by making a discovery.

The Land Office Construction of the Saving Section.

On claims located on the withdrawn land, which are relieved by the Pickett Act, the work of continuous oil seeking must be diligently kept up. But the statutory requirement of diligence is restricted to this class of claims. The other class, those valid in all respects by compliance with the local laws and Federal Statutes, seem to be covered by the Saving Section.

Section 37, leaving out the parenthetical break, reads: "that the deposits of coal, phosphate, sodium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals: * * * shall be subject to disposition only in the form and manner provided in this Act, except as to valid claims existent at date of passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery."

As to possessory claims in general it has been decided that the government does not require that they be hastened to patent, but allows them to be held indefinitely by performance of the annual labor. No other condition is imposed directly by Act of Congress nor implied by deductions from the principles of law applicable to the construction of every kind of legislation. There are thus two sorts of claims defective in the matter of discovery:

1. Claims on withdrawn lands covered by the Pickett Act where the search for oil must be diligently prosecuted.

2. Placer claims valid in every respect except as to discovery which the 1920 Act says are thereafter to be "maintained in compliance with the laws under which initiated."

"The laws under which initiated" can refer only to the original

Act of 1872 and its amendment of 1880, R. S. Sec. 2324, imposing annual labor and the subsequent statutes referring specifically to Oil Placers but adding no new conditions as to their initiation or continuous holding.

By the laws under which "initiated" annual labor is the sole condition imposed and we know of no statute which introduces or adds any new condition.

The only line of argument which would tend to support a construction fatal to claims, protected by annual labor but not by diligent search, would be, by consideration of the present economic and political situation, taking a composite view of the whole subject of oil production. If such view is taken the outcome would be problematical. If production is to be encouraged it would be better to let such claims come under the leasing Act and be possibly exploited by successful permits. If oil production is to be discouraged it would be better to let them remain in the hands of the idle locators. But when law is construed by resort to such line of reasoning it is no longer the interpretation of a statute but a judicial suggestion as to what the law ought to be.

Section 38.

Refers only to the prescribing of Land Office Fees and commissions by the Secretary of the Interior.

CHAPTER 66.

PERMIT AND LEASE ON NONPROVEN GROUND.

The Act divides oil and gas lands at the outstart into two divisions, to wit:

1. Lands on a known geologic structure.
2. Lands which are not proven as to their oil values.

The procedure on the nonproven ground is by permit followed by lease. On the geologic structure a lease issues on accepted bid without any previous permit.

The procedure on the other minerals mentioned is also by lease without the necessity of permit, except that on coal lands under section 2 a prospecting permit is allowed under certain circumstances. And on sodium by section 23.

The area covered by the permit must not exceed 2560 acres (which is 4 square miles or sections) and must be on land "not within any known geological structure of a producing oil or gas field." Sec. 13.

Whether the land on which permit is asked, is within such a geological field as is mentioned in Section 13, is to be determined by the maps filed by the geological survey and transmitted to the local Land Office. Rule 2. This is probably the only practical method by which such fact could be determined and except possibly in an extreme case the Courts would hardly inquire into the question of fact as to whether or not, such geological maps were correct.

As oil is the principal mineral, we consider it first and this chapter covers the procedure leading up to permit and lease on the nonproven ground followed in the next chapter by the materially different practice to secure lease on land within the geologic or geological structure, which is the arbitrary term used in the Act to designate the field or portion of the field which is recognized as producing or proven territory.

Later we print the rules and endeavor to collate them with the proper sections of the Act.

Procedure by the Claimant to Procure Permit.

Assuming that a party desires to prospect for oil outside the known geological structure and is a citizen of the United States or represents an American corporation and has in view the particular ground he desires to secure and that such ground has been surveyed by the government, he proceeds as follows:

Preliminary Monument.

The first step before applying for a permit is to erect a preliminary monument which should be a stake of wood or iron, usually wood, not less than 4 feet in height and at least 4 inches in diameter both ways, sunk in the ground at some conspicuous place on the land.

It is usually put in the center but this is immaterial provided it be in a conspicuous place.

This stake must display a notice in writing. Sec. 13. Rule 5, subsection b.

The following form explains what it contains:

NOTICE OF INTENDED APPLICATION FOR PERMIT.

Notice is hereby given that the undersigned C. W. Thompson of Denver, Colorado, within thirty days after date of posting this notice, will apply to the Hon. Secretary of the Interior for a prospecting permit for oil and gas on this land, being the Northeast quarter of Section ——— Township ——— South, Range ——— containing 160 acres in ——— County, Wyoming.

The Northeast corner stake of said quarter section bears northeast from this monument 560 feet.

A prominent butte known as Skeleton Butte, bears southwest from monument about one mile.

A bearing tree, cottonwood, 12 inches diameter, marked B. T. bears 25 feet due west from the southwest corner of the quarter section.

Date of Posting.

June 1, 1920, at 10 A. M.

C. W. Thompson.

The rules do not require any witnesses to this notice.

Signature.

Rule 5 subsection b. says "to be signed by the applicant" but we do not apprehend that this requires his personal signature, and the Department has ruled that an agent may post the notice. See page 377.

The actual signature on notices and location certificates on mining claims has never been required and if the notice is on a board, it would be often impossible to place such a signature as could be identified as the personal subscription of the signer.

Having placed such monument and posted such notice, the applicant within thirty days from date of posting applies for a prospecting permit by filing his petition or application in the local Land Office.

Contents of Application for Permit.

The Regulations, rule 4, do not give a form but prescribe the contents of the application.

The application should of course have a proper address, should identify the land desired, should show that the applicant is a party entitled to apply and that he has complied, with the regulations and in all respects comes within the provisions of the Act. By a recent ruling the Department has held that an agent or attorney in fact may locate a claim but that the party in whose interest the claim is located must file the application for a permit.

Subsections a and b of rule 4, are self explanatory, as to citizenship.

Subsections c, d, e and f can readily be complied with and an instance is covered in the form printed below.

Subsection g is one which the department has perhaps no right to require beyond enough to identify the party, with his age, address and other incidents sufficient to raise the ordinary presumption of respectability and good citizenship. Certainly, a man who has had no previous experience in oil seeking has as much right to prospect for it as one who has either lost or gained by previous ventures, and to insist on a strong showing under this clause could be justified only on the theory that the department is under no legal obligations to grant a permit to a

qualified person who has fully complied with the Act and the rules, as a matter of right.

Preference Right.

Subsection h refers to the matter of preference right.

It seems that the applicant for permit may file his petition without any preliminary monument or notice and if no other party intervenes, he will secure his permit in due time.

The office of the preliminary monument and notice above mentioned is to hold the land for thirty days against later comers. If he should file his petition without his monument and notice, another could place a hostile monument and notice and obtain precedence. The petition for permit of such second party altho filed later, would take precedence of the first filing.

But he cannot dispense with locating his ground which, whether on a government subdivision or on a special survey, would be by marking his corners, or seeing at least that the stakes were in place and on either sort of survey, placing the monument stake and notice of his claim on the ground. All this seems unnecessary if he is not seeking a preference right and yet some meaning should be given to the words "locate such lands" used in section 13.

So that practically, it is advisable that he plant his stake and notice, after marking his corners just the same as if he sought a preference right, because he could not *locate* without doing substantially the same thing.

The filing of location certificate in the County Recorder's office, doubtless is no longer required. The Act on this point of location is as obscure as it could be drawn but to place monument and notice and mark corners would certainly comply with it.

The preliminary monument and notice and the location precede the application and such location notice and monument operate for thirty days to give a preference right, that is to say; the applicant has thirty days from the date of monumenting to file the application for permit. If there is delay in the issue of the permit not chargeable to the applicant, no loss falls upon the applicant seeking to become a permittee.

Compliance with subsection h of rule 4, is complete by stating that he has posted his notice, with the allegation that no other notice has been posted or that he has the prior notice, attaching a copy of it.

Subsection i refers to the bond which as a matter of convenience in almost every case would be by a surety company.

It would seem from rules 4 and 5 that any number of persons may separately apply for permits on the same land, in which case their applications would be considered, presumably in the order of their receipt at the local Land Office, but if a party applying wishes to anticipate and cut out other applications after his preliminary monumenting, he must do the things above stated, which give him a preference right.

This preference right is not evidenced by any separate paper nor in fact by any paper at all. It is merely the legal effect or result of compliance with the Statute and regulations.

If the applicant has no fear of other applications, he can apply for his permit without any suggestions about preference rights.

Conflict Between Applications.

As to priority contests between one who files in the Land Office his application for permit without having posted the notice to secure a preference right and one who has posted his notice to secure a preference right, but is subsequent in filing his application for a permit, Rule 5, subsection c. says:

"In cases of conflict between a preference right application and one filed without any claim of preference, the priority of the initiation of the claim will govern, for example, the filing of a proper application in the land office prior to the posting of notice by another, as aforesaid, will give a prior right."

To determine this point requires a close analysis of the language of Section 13.

It says that the party who posts and monuments is entitled to a "*preference right over others.*" This cannot possibly refer to those who come later either as posters or filers of applications. As a matter of course, the poster would have a preference right over such later comers without any statutory grant of such preference right. It would seem logically to refer to those seek-

ing to assert some claim to the same land who had some pretence to priority and such class could only be parties who had filed their applications without posting, but had not so far progressed as to become entitled to a permit. As to when, under the obscure language of the Section, the right to the permit becomes a vested right it is impossible to state with certainty.

The interpretation of the Land Department, who act under the advice of able lawyers, is entitled to great respect and may be right, but certainly some meaning should be given to the word "preference" and a class of persons must be formed who are the "others" against whom the preference operates.

On this view of the Act it becomes a debatable question and an argument in favor of the poster may be presented perhaps equally strong as that which may be advanced in favor of the Land Office construction.

FORM OF APPLICATION FOR PERMIT.

To the Honorable the Commissioner of the General Land Office:

Your petitioner C. W. Thompson of the city and county of Denver, State of Colorado whose Post Office address is 1812 Lawrence St., Denver, Colorado, respectfully represents:

That he is a native born citizen of the United States and hereto attaches his affidavit of citizenship.

That he does not hold any permit and that he has not applied for any permit other than the one now petitioned for.

That the land for which he desires a permit is the N.E. $\frac{1}{4}$ of Sec. Twp. S. R. W., containing 160 acres.

That he believes the land applied for is a favorable field for prospecting for oil, because he knows that oil has been found on other land in the same State with similar topography and apparently of the same geological formation, but that the land applied for is not within any known geological structure of a producing oil or gas field as is shown by the fact that it is not included within any of the maps filed by the geological survey in the Land Office of the District in which it is situate.

That your petitioner proposes to conduct exploratory operations on said land by sinking at a point near the center of said quarter section with a derrick and drill for which he has con-

tracted (or for which he is about to contract) and has secured the money, \$20,000 for such derrick and sinking, and that he expects to commence to sink within 60 days from the date of securing permit and to continue said sinking without intermission to the depth of 2000 feet unless oil or gas is sooner found.

That your petitioner has been in the business of oil sinking and oil producing for at least two years and has been interested in the sinking of and production from, one well in said county, (or)

That your petitioner has had no previous experience in operations of this nature, but has the education and capital necessary to qualify him to work under permit as petitioned for.

Your petitioner refers to the International Trust Company, Denver and J. K. Mullen of 896 Pennsylvania street, Denver, as to the reputation and business standing of your petitioner.

Wherefore, petitioner asks that the department issue to him a permit to work and operate said described land under the terms of the Act generally known as the Oil Leasing Act approved March 25, 1920, and the rules and regulations issued thereunder.

C. W. Thompson.

Verification.

STATE OF COLORADO, }
City and County of Denver. } ss.

Before me the subscriber, a Notary Public in and for said City and County personally appeared C. W. Thompson of lawful age, who being first duly sworn saith that he is the Petitioner named in the foregoing application for Permit.

That he has read the same and knows the contents thereof, and that the same and the matters and things therein stated are true of his own knowledge.

C. W. Thompson.

Subscribed and sworn to before me this 10th day of July, A. D. 1920.

My commission expires September 26, 1923.

Frederic A. Fleming.

Notary Public.

[SEAL.]

The application being filed and acted on in due course, the permit issues which would be transmitted to the local Land Office and delivered to the permittee.

Bond of Oil and Gas Permittee.

Under regulation 4 (i) it was provided that the application should be accompanied by a bond with qualified corporate surety in the sum of one thousand dollars, and in Circular No. 676, issued March 25, 1920 by the Commissioner the form of bond is given. In a letter of the department dated June 12, 1920, found in the *July Land Service Bulletin*, it is said, referring to the bond regulation: "We have interpreted this regulation to apply only to permits granted, and not to applications for permit. Of course, the permittee in lieu of a corporate bond may deposit cash or Liberty Bonds of the face value of \$1,000."

Under the above construction the permit when issued, will be delivered upon the execution of a sufficient bond or deposit of security above suggested. The form of the bond is as follows:

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE.

U. S. Land Office——

Serial Number——

BOND OF OIL AND GAS PERMITTEE.

Act of February 25, 1920 (Public No. 146).

KNOW ALL MEN BY THESE PRESENTS, That we, ——, of the county of ——, in the State of ——, as principal, and —— of the county of ——, in the State of ——, as surety, are held and firmly bound unto the United States of America in the sum of —— dollars, lawful money of the United States to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators or successors, and assigns, jointly and severally by these presents.

Signed with our hands and sealed with our seals this _____ day of _____ in the year of our Lord one thousand nine hundred and _____.

The condition of the foregoing obligation is such that, whereas the said principal has made application under the act of February 25, 1920 (Public No. 146), for a permit to prospect for oil and gas for two years upon the following described lands

.....

and whereas said permit, if granted, will be on condition that all operations shall be conducted in accordance with approved methods; that all proper precautions shall be exercised to prevent waste of oil or gas developed in the lands, or the entrance of water through wells drilled by, or on behalf of, the principal to the oil sands or oil-bearing strata to the destruction of the oil deposits.

NOW THEREFORE, if said principal shall promptly repair any damage that may result to the oil strata or deposits resulting from improper methods of operation, or from failure to comply fully with the aforesaid conditions of said permit, then the above obligation is to be void and of no effect; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in presence of—

Name and address of witness:

.....
.....
.....
.....

.....[L. S.]

Principal.

.....[L. S.]

Surety.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved March 25, 1920.

JOHN BARTON PAYNE,
Secretary.

Regulation 6 gives the form of the permit, page 334.

Within ninety days after the date of the permit the permittee must mark each corner with substantial monument and post in a conspicuous place on the ground a notice that the permit has been granted, with a description of the land covered by such permit. Sec. 13.

When the permit is upon officially surveyed land we advise that the corners should be marked and the stakes reset, if missing, marking each corner with the name or initial of the permittee and the number of the permit, the same as when there has been special survey.

The bearings when the land is a subdivision of a government survey seem of little value but they are apparently required, the same as if there had been only a special survey.

When the ground selected by the permittee is not a legal subdivision he must advance the cost of special survey to segregate it. Sec. 14.

The other three quarters are advertised for competitive bidding. Sec. 14.

SEC. 13 of the Act requires as to the notice only two conditions and the regulations do not add any more, to wit:

That such permit has been granted and a description of the land covered thereby.

NOTICE THAT PERMIT HAS BEEN GRANTED.

Notice is hereby given that a permit has been granted to prospect for oil and gas on this land to C. W. Thompson of Denver, Colorado, by the Hon. Secretary of the Interior, dated June 1, 1920 upon the northeast quarter (repeating the same description as in the form last above including the bearings) rule 5, b. Date of Posting.

July 10, 1920 at 10 A. M.

C. W. Thompson.

The above notice is drafted from section 13 of the Act and in compliance with the demand contained in the Permit found in subsection 1 of rule 6.

This is all that is required of the permittee except to drill and

continue his prospecting under conditions which are clearly set forth in the permit.

In general terms he has six months from date to commence drilling, must sink 500 feet the first year and to the depth of 2000 feet within two years, unless mineral is found at less depth.

At the end of two years if neither oil or gas is found the permit automatically ends, unless application for extension is made.

If oil or gas is found the permittee is entitled to become a lessee of one fourth of the permitted land, but if the entire tract does not exceed 160 acres he is entitled to the whole of it. Sec. 14.

If it exceeds 160 acres he has the right to the full fourth of the area of the permit. The reference to 160 acres in the first proviso of section 14 is confined to small permits of 160 acres or less and does not qualify the one-fourth clause. The permittee has the right to select the particular 160 acres out of the full tract which selection must be in compact form. Sec. 14.

Paragraphs a and b of rule 5 give the details of the monumenting required before a party can apply for a preference right.

Right to Permit.

When the party applies for a permit the first and perhaps the most important question that may arise under the Act is, whether or not, if he complies with all the requirements of the regulations, he is entitled as of right to such permit or whether the department can refuse such permit at its discretion. On this point rule 2 says:

"It should be understood that under the Act, the granting of a prospecting permit for oil and gas is discretionary with the Secretary of the Interior, and any application may be granted or denied, either in part or in its entirety, as the facts may be deemed to warrant."

With this construction of the Act we cannot agree. The Act goes to the limit in its grant of power to the department to make rules and regulations to carry out its provisions. These rules an applicant complies with strictly and is met with a refusal based on a construction which makes it discretionary with the

department to refuse any application whether it complies with the regulations or not.

Of what use are the regulations if when complied with, the application for permit is met with a flat refusal to grant it. If such is its proper construction there is no need of regulations, they have no function to perform and the permit should issue to any party favored by the department to whom they choose to deliver this evidence of a property right without complying with any precedent conditions.

Extension of Life of Permit.

By section 7 of the Regulations it is provided that if for any reason the permittee is unable, with the exercise of diligence to test the land within two years, application for extension for not to exceed two years may be filed within the life of the permit. No form is given in the Regulations but the following form with such alterations as may be necessary to state the facts should be sufficient.

PETITION FOR EXTENSION OF PERMIT.

To the Hon. Secretary of the Interior:

Your petitioner, C. W. Thompson, of 1812 Lawrence St., City and County of Denver, State of Colorado, a native born citizen of the United States, respectfully represents:

1. That he is the owner of oil and gas permit No. 123 dated Oct. 1, 1920 and not yet expired on the Northeast Quarter of Section 1, Township 2, South Range 60 West of the 6th P. M. in the County of Fremont, State of Colorado.

2. That under said permit he promptly entered upon said premises and diligently prosecuted work on the same and expended on such work and in payment for labor, supplies and material furnished the same, the sum of \$3,000 all of which has been paid for in full.

3. But that without fault chargeable to your petitioner, he has been unable strictly to comply with all the conditions of such permit and will not be able to fully comply with such conditions during the life of such permit.

4. That he drilled at a point near the center of the permitted

tract to the depth of 500 feet as required by such permit and the well so sunk is in good condition for further operations.

5. That in the further sinking of the well beyond the 500 feet, at the depth of 575 feet, the work was necessarily stopped on or about the 12th day of January 1921 on account of an unavoidable accident to the rig, to-wit: by the breaking of the rope (or the destruction of the rig by fire, or by the bit becoming fast fixed in the well, or any like accident, or any other reason in the way of excuse for noncompliance, according to the facts.)

WHEREFORE, your petitioner respectfully asks an extension of said permit under the terms of section 7 of the Oil Regulations in circular No. 672 for the further period of two years from the date of its expiration.

C. W. Thompson.

STATE OF COLORADO,)
City and County of Denver. } ss.

Before me the subscriber, a Notary Public, in and for said City and County of Denver, personally appeared C. W. Thompson, who being first duly sworn, deposes and says: that he is the petitioner named in the foregoing petition and that the matters and things stated in said petition are true of his own knowledge.

C. W. Thompson.

Subscribed and sworn to, before me this first day of October, A. D. 1922.

My Commission expires Sept. 26, 1923.

Frederic A. Fleming,
Notary Public.

The above petition must be corroborated by the affidavits of one or more persons cognizant of the facts which are stated in the petition.

The inability to secure funds, an accident of only too common occurrence, may or may not be a sufficient excuse. It is of course no defense to a definite contract to pay money but in matters

addressed to the discretion of the department or even to a Court in Equity it may be valid by way of excuse for failure to perform or delay in performance.

Where such is the only real excuse available to the permittee the facts should be stated in detail with such extenuations as the party may be able to add and should not be stated in general terms as a mere conclusion of law.

Sickness, drought, epidemic, financial panic and what ever is included under the collective or generic term "Act of God" may be valid excuses in such cases.

The legal effect of sickness is considered in the notes to *Central of Georgia Railway v. Hall*, 124 Ga. 322, as reported in 4 L.R.A.(N.S.) 898. *Dickey v. Linscott*, 22 Me. 453, 37 Am. Dec. 66.

Failure of crops is good ground for extension of time on payment of pre-emption money. *In re Brown*, 20 L. D. 378.

Personal accident to the pre-emptor and accidental fire are both considered and allowed as excuses in *Robinson, in re*, 21 L. D. 116.

Loss of crops through failure to secure threshing machine authorizes an extension of time. *In re McGrath*, 18 L. D. 52.

The Lease.

If within the two years or any extension of the time, oil or gas is found in such quantity as makes a lease desirable the permittee is entitled to it. Rule 8.

No form for application is prescribed, the only reference to it in the rule being that it should be established to the satisfaction of the Secretary. The application should be by filing in the Local Land Office; in fact all correspondence with the Department of the Interior, if the procedure long established in all sorts of entries is followed, would be commenced in the Local Land Office to be forwarded to the General Land Office.

This lease is the absolute right of the successful permittee, he has earned it and cannot be deprived of it without express violation of the law.

FORM OF APPLICATION FOR LEASE.

To the Honorable the Secretary of the Interior:

Your petitioner C. W. Thompson whose Post Office address is 1812 Lawrence Street, Denver, Colorado.

Respectfully represents that he is a citizen of the United States and that he is the holder of (or that he is the assignee of the holder, giving date of assignment with copy of the same) Permit No. issued to him on the day of 1920, embracing the North East Quarter of Section Township South Range West containing 160 acres. That upon receipt of such permit he (or that his said assignor) marked and staked the grounds as required by its terms and has as he verily believes complied substantially with all the requirements of said permit.

That on or about the day of 1920, at the depth of feet in the well which he sank on said permitted ground he struck oil (or gas, or gas and oil, as the case may be stating quantity approximately) yielding about barrels per day and he believes that such well should continue to produce at about the same rate.

That he is ready and offers to pay 20 per cent of the value of such oil between the date when the well began to produce and the date of the filing of this application for lease.

That he is ready and willing to furnish such other information as the department may reasonably require in the premises.

Wherefore, petitioner asks that a lease issue to him for said 160 acres of land on the terms mentioned by the Oil Leasing Act and in the form set forth in the regulations of the department.

C. W. Thompson.

Verify as on Page 313.

The form of the lease is given in regulation 17, page 341.

Pre-emption Right of the Permittee.

After the permittee has received his lease on the segregated one-fourth, the remaining three-fourths are to be advertised for competitive bidding, subject to the pre-emption right of the

lessee of the single one-fourth, such pre-emption or preference right apparently amounting to nothing unless the bid of such preferred party should be of exactly the same royalty as the royalty bid by a stranger. If such third party or stranger bids the highest royalty he becomes entitled to the lease. If the preferred party is the highest bidder he is entitled to the lease, not because of any preference right, but because he is the highest bidder.

The General Land Office has the authority to reject under Section 14 and does not seem to be qualified as to its action in refusing such bids by any other provisions of the Act.

If on any tract or tracts no acceptable bid is made there is no doubt that they may be reoffered at second auction although the readvertisement mentioned in section 36 is confined to auction of royalties.

CHAPTER 67.

PROCEDURE TO PROCURE LEASE ON THE GEOLOGICAL STRUCTURE.

A party is not allowed to select a piece of land and apply for papers on it when it lies within a known geological structure, segregated as such in the Local Land Office.

The department divides such structure into 640 acre tracts or smaller tracts and advertises such tracts for competitive bidding.

If the ground on which a lease is desired has not been advertised for bids there is no doubt that the Secretary of the Interior on request of a reasonable number of responsible parties would proceed to throw open that part of the field by the necessary publication.

The practice under Section 17 of the Act which covers this class of applications is formulated in rules 13-16, printed on pages 339-341.

The ground is divided into tracts of the size and shape designated in said section.

It is then advertised by public notice in a local newspaper for thirty days giving the date on which a public auction of such lands will be held. Such notice is also posted on the bulletin of the local Land Office.

Before such auction is called for the royalty on each parcel has been fixed by the department as also the advance rent, the only undetermined factor being the bonus, and the lot or parcel goes to the person who offers the highest bonus.

Rule 15 states what is required of the successful bidder as to certified checks, affidavit of citizenship and a special affidavit covered by the following form:

AFFIDAVIT OF BIDDER.

STATE OF COLORADO,
 City and County of Denver. } ss.

Before me, the subscriber, a Notary Public in and for said city and county personally appeared Charles W. Thompson of lawful age, who being first duly sworn, saith that he was the highest and best bidder at the auction of oil and gas tracts held at, Wyoming on the day of A. D. 1920 for the North East Quarter (describe land as in form on page).

That he does not hold any lease in the geologic structure of the same producing oil or gas field, nor any permit.

That the acceptance of the lease by affiant as a successful bidder will not be in violation of the provisions of Section 27 of the Act relative to excess holdings by individuals or corporations.

C. W. Thompson.

Sworn and subscribed before me this day of A. D. 1920.

My commission expires September 26, 1923.

Frederic A. Fleming,

[SEAL]

Notary Public.

This affidavit requires modification where the affiant is the holder of other leases or permits as referred to in rule 15, subsection b.

Such showing is then transmitted to the General Land Office which will act on the papers and within thirty days either reject the bid or mail the triplicate lease for execution with proper instructions.

The form of the lease is the same as used on nonproven territory.

Auction and Bonus.

Section 17, requiring the oil and gas blocks on the known geologic structure to be offered to the highest responsible bidder

by competitive bidding under general regulations brings in the common law of auctions.

An offer of sale is not one which can be withdrawn after a valid bid has been made. The bidder becomes a contracting party as soon as the sale is announced by the auctioneer and, having made the highest bid, is entitled to the lease just the same as if he had a contract in writing for sale of the property at a fixed price.

Of course questions may arise as to who is a responsible bidder and whether the sale was properly advertised, but assuming everything regular in this respect, the bidder becomes entitled to the lease.

Rules 15 and 16 purport to regulate the auction sale and the report of what was done at such sale.

The bidder must pay a deposit to the local land office by check for one fifth of the amount of the bonus and at the same time must show his qualification to accept a lease (Rule 15a and b.) and the Register and Receiver thereupon report the proceedings to the Commissioner of the General Land Office.

On receipt of such report the Secretary of the Interior takes action and will "either award the lease to the successful bidder or reject same" (Rule 16) but this phrase undoubtedly means that he will act in the premises according to law and will not "reject" unless the bidder is in default in some particular in the showing required of him.

The approval of the report is the final act in favor of the bidder and he thereupon tenders the advancement and pays the balance of the bonus and otherwise complies with the terms of Rule 16.

A Bonus is not a gift but in the nature of a premium. *Ken-nicott v. Wayne County*, 16 Wall. 452, 471. It may be exacted by the state as the price of a franchise. *Baltimore & O. R. Co. v. Maryland*, 21 Wall. 456. In its popular sense it is equivalent to "premium" and in the case cited was held to mean "price." *Leslie v. Leslie*, 50 N. J. Eq. 112.

There is no special meaning to the word bonus otherwise than the common understanding of the term.

CHAPTER 68.

LAND OFFICE REGULATIONS.

The following are the instructions of the Commissioner of the General Land Office issued to carry out the provisions of the Leasing Act as expressly authorized by its section 32 and by repeated reference in many other of its sections.

It has been the policy of Congress for a long time to leave much of the details of the enforcement of the land laws to the Interior Department and of recent years it has devolved such duties upon the department to such an extent as to encroach seriously on legislative powers which it is conceded cannot be rightfully entrusted to or imposed upon it.

Be that as it may this Oil Leasing Act can neither be understood nor its benefits secured without constant and close attention to the rules printed below as they stand to-day; but they are liable to amendments which will undoubtedly be made in the form of circulars, copies of which are always furnished on request without charge by the local Land Offices.

These circulars are divided into sections and subsections but for convenience and to avoid confusion with the sections of the Act, will generally be referred to as "Rule" or "Reg." with the proper number.

In referring to the General Land Office or to the Secretary of the Interior the "Department" is used interchangeably for either such office or such officer.

Decisions on the force and effect of Regulations.

The power of the Department to make and enforce Regulations for the control of the public domain is at this date unquestionable. (See page 251). It cannot, however, legislate so as to

controvert an Act of Congress, and an analysis of the cases below cited lead to the general conclusions:—

1. That “rules” and “regulations” are practically synonymous.
2. That either rules or regulations imply a class to be controlled and not mere instances.
3. That ordinances and by-laws are more in the nature of legislation for municipalities and corporations.
4. That regulations must be reasonable.
5. That regulation cannot be enlarged so that it amounts to prohibition.

Where a bank having power to make regulations for the conduct of its business and affairs, makes a by-law attempting to give the bank a lien on the stock of its debtors it is not a regulation under such power. *Willard v. Bank*, 18 Wall. 589.

An order made by the Town Trustees establishing the grade of a street is a regulation. (But this seems more like an instance than a regulation.) *Meyer v. Fromm*, 108 Ind. 208.

A regulation is a partial restriction not amounting to a prohibition. *Richards v. Bayonne*, 61 N. J. L. 496.

“The term *regulations* implies a rule for a general course of action. It does not apply to a case in which specific instructions are to be given, applicable to that case alone.” *Christopher v. New York*, 13 Barb. (N. Y.) 567, 573.

The word “regulate” has a broad meaning and the power to regulate carries with it full power over the thing subject to regulation. *R. R. Comm. v. Kansas City So. Ry. Co.*, 111 La. 133, 35 So. 487; *Durland v. Durland*, 74 Pac. 274 (Kans.).

Legislation may in many ways affect commerce without constituting a regulation of it within the meaning of the Constitution. *Kavanaugh v. So. Ry. Co.*, 47 S. E. 529 (Ga.).

Regulations construed as equivalent to rules. *Bullion Beck M. Co. v. Eureka Hill M. Co.* 12 Pac. 660 (Utah).

A regulation presupposes the existence of a right. To regulate means to adjust, to govern by rule. It is a restriction which does not amount to a prohibition. *City of Butte v. Paltrovich*, 74 Pac. 521 (Mont.).

Rules and regulations in a legal sense mean laws. The Court refused to apply the terms to reach a special act of the Legisla-

ture granting a divorce. *Estate of Higbee, in re*, 5 Pac. 693 (Utah).

Under an act of Congress (R. S. 1869) a writ of error was allowed in criminal cases "under such regulations as may be prescribed by law." The Court construed these words to mean: the rules of law by which this right is to be exercised and that the Court and not the party in interest, was to decide upon what state of the record a writ of error might issue. *Donovan v. Territory*, 2 Pac. 532 (Wyo.).

The Montana Constitution gave Appellate jurisdiction to the Supreme Court "under such regulations as may be prescribed by law." The Court held that this would allow the legislature to regulate appeals but in the absence of such legislation the Court could adopt rules for itself in place of such legislation. The decision was based more upon the inherent power of the court than upon construction of the Constitution. *Finlen v. Heinze*, 69 Pac. 829 (Mont.).

Within the term "regulation" are embraced two ideas. One is the mere control of the operation of the road, prescribing the rules for its management. Regulations in this sense may be considered as purely public. But within the scope of the word regulation, is the fixing of rates, which necessarily affects the property interests of the Railroad owners, and under the latter meaning the court set aside an Act of the Nebraska legislature fixing local freights so low that if enforced, there would be no net earnings from the entire transportation of the road. *Ames v. U. P. Ry.*, 64 Fed. 165, 178.

In the Colorado legislation concerning sale of their state lands, the phrase of the Constitution "under such regulation as may be prescribed by law," Sec. 9 Art. 9, was construed to mean such reasonable rules as the legislature may prescribe. *Leasing of State Lands, in re*, 18 Colo. 359.

A New Jersey Act prohibiting the sale of liquor by small measures involved the question of the difference between regulation and prohibition. The Court held that the Act was a regulation and not a prohibition. The case is reported at great length with elaborate arguments, the Court of Appeals being almost evenly

divided, 8 to 7. *Paul v. Gloucester County*, 50 N. J. L. (21 V room,) 585.

When a Statute referred to "By-laws, Ordinances, Resolutions, and Regulations" to be passed by a City the Court said, "certainly there is some distinction in these words in ordinary usage." Regulation is the most general of them all, meaning any rule for the ordering of affairs public or private. Ordinance refers to legislation. Resolution is almost the equivalent of ordinance. The Court did not define By-laws which in their modern meaning are restricted to corporations although historically it is a word going back to the Danish Invasions of England referring to Towns. *Kepner v. Com.* 40 Pa. 124.

Coyler v. Skeffington, 265 Fed. 17, a deportation case is a long and interesting case on the procedure where a department acts under its regulations instead of under process of law.

The case shows that their regulations were subject to private construction by the department undiscovered to the parties affected by them and so lost the publicity everywhere essential to valid constitutional law.

In *Capa v. United States*, 152 U. S. 211, it is held that the court takes judicial notice of regulations "for the transaction of business" when a department is authorized by Act of Congress to prescribe such regulations. But it does not decide that the Department can put a private construction before such regulations, that it can amend them and after an illegal act is done under the amendment restore them to the original form as was shown to be the practice in the deportation case above noted.

The Secretary of the Interior may, even without appeal from the General Land Office, consider any matter there pending and on due opportunity to parties to be heard, correct any errors in the decisions of that office. *Lake Superior Ship Canal Co. v. Patterson*, 30 L. D. 161.

Where power is delegated to the Secretary of a Department it is not to be administered arbitrarily and secretly but fairly and openly "under the restraints of the tradition and principles of free government." So held in a Chinese Exclusion Case. *Kwock Tan Jat v. White*, 40 Sup. Ct. Rep. 566.

See LAND OFFICE, page 251.

¹ OIL AND GAS REGULATIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 11, 1920.

REGISTERS AND RECEIVERS,

UNITED STATES LAND OFFICES.

Sirs: Under the authority of the Act of Congress approved February 25, 1920, entitled, "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," the following rules and regulations are prescribed for the administration of the provisions of said Act relative to oil and gas:

I. Oil and Gas Permit.

Section 13 of the Act authorizes the Secretary of the Interior to grant a qualified applicant the exclusive right to prospect for oil or gas for the period of two years, unless extended, and under authority thereof the following rules and regulations will govern the issuance of such permits:

1. QUALIFICATIONS OF APPLICANTS.—Pursuant to section 1 of the Act, permits may be issued to (a) a citizen of the United States; (b) an association of such citizens; (c) a corporation organized under the laws of the United States or of any State or Territory thereof;² or (d) a municipality.

2. LANDS TO WHICH APPLICABLE.—The permit thus issued may include not more than 2,560 acres of land wherein such deposits belong to the United States and are not within any known geological structure of a producing oil or gas field, the lands applied for to be taken in a reasonably compact form, by legal subdivisions if surveyed, and in an approximately square or rectangular

¹ This Circular No. 672 issued March 11, 1920, was amended by Circular No. 676 dated March 25.

The amendments are mostly by striking out or modifying certain words and clauses. These regulations are printed as they now read since the changes with notations as to each amendment.

² The amendment struck out the words, "provided that no stockholders are citizens of nonreciprocating countries as provided in section 1 of the Act." following the word "thereof."

tract if unsurveyed, the length of which must not exceed two and one-half times its width.

Such leases may not include land or deposits in (a) national parks; (b) forests created under the Act of March 1, 1911 (36 Stat., 961), known as the Appalachian Forest Reserve Act; (c) lands in military or naval reservations; nor (d) Indian reservations, or (e) ceded or restored Indian lands, the proceeds from the disposition of which are credited to the Indians.

All permits or leases for the exploration for or development of oil or gas deposits under this Act within the limits of national forests or other reservations or withdrawals to which this Act is applicable shall be subject to and contain such conditions, stipulations and reservations as the Secretary of the Interior shall deem necessary for the protection of such forests, reservations or withdrawals, and the uses and purposes for which created.

The boundaries of the geological structures of producing oil or gas fields will be determined by the United States Geological Survey, under the supervision of the Secretary of the Interior, and maps or diagrams showing same will be placed on file in local United States Land Offices.

It should be understood that under the Act, the granting of a prospecting permit for oil and gas is discretionary with the Secretary of the Interior, and any application may be granted or denied, either in part or in its entirety, as the facts may be deemed to warrant.

3. PERMITS OR LEASES FOR OTHER MINERALS.—The granting of a permit or lease for the development or production of oil or gas will not preclude other permits or leases of the same land for the mining of other minerals, under this Act, with suitable stipulations for such joint-operation, to the end that the full development of the mineral resources may be secured, nor will it preclude the allowance of applicable entries, locations, or selections of the lands included therein with a reservation of the mineral deposits to the United States.

4. FORM AND CONTENTS OF APPLICATION.—Applications for permits should be filed in the proper district land office, addressed to the Commissioner of the General Land Office, be suspended for 30 days to enable preference-right claims to be presented

before action, and after due notation then forwarded for his consideration, with a full report as to status and conflicts. No specific form of application is required, and no blanks will be furnished, but it should cover, in substance, the following points, and be under oath:

(a) Applicant's name and address.

(b) Proof of citizenship of applicant, by affidavit of such fact, if native born; or if naturalized, by a certified copy of the certificate of naturalization on the form provided for use in public-land matters, unless such a copy is already on file; if a corporation, by certified copy of the articles of incorporation, *and a showing as to the residence and citizenship of its stockholders.*³ If a municipality, a showing of (1) the law or charter and procedure taken by which it has become a legal body corporate; (2) that the taking of a permit or lease is authorized under such law or charter; and (3) that the action proposed has been duly authorized by the governing body of such municipality.⁴

“(c) A statement that the applicant is not the holder of more than two other subsisting permits in the same State, nor of any permit in the same geologic structure, together with a statement of any other applications for permits in the same State, in which the applicant is directly or indirectly interested. In this connection attention is directed to the limitations and exceptions of Section 27 of the Act.”

(d) Description of the land for which the permit is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case, if deemed necessary, a survey sufficient more fully to identify the land may be required before the permit is granted. In order to properly identify unsurveyed lands, great care should be taken, and if possible the metes and

³ Instead of the words between the * * the rule before amendment read:

“and evidence that none of its stockholders are citizens of another country, the laws, customs, and regulations of which deny similar or like privileges to citizens or corporations of this country;”

⁴ Paragraph c before amendment read:

(c) A statement that the applicant is not the holder of, and has no direct or indirect interest in, any other subsisting permit, and that he has no other application pending for a permit.

bounds description should be connected by course and distance with some corner of the public land surveys.

(*e*) Reasons why the land is believed to offer a favorable field for prospecting, together with the statement that to the best of applicant's knowledge and belief the land applied for is not within any known geological structure of a producing oil or gas field.

(*f*) Proposed method of conducting exploratory operations, which must be in accordance with approved methods of exploration, amount of capital available for such operations, and the diligence with which such explorations will be prosecuted.

(*g*) Statement of the applicant's experience in operations of this nature, together with references as to his reputation and business standing.

(*h*) If the applicant is claiming a preference right as explained in the next succeeding section of these regulations, he should set up fully the facts upon which such preference right is based, together with a true copy of the posted notice.

(*i*) The application must be accompanied by a bond with qualified corporate surety, in the sum of \$1,000, conditioned against the failure of the permittee to repair promptly, so far as possible, any damage to the oil strata or deposits resulting from improper methods of operation. The penalty of the bond may be increased by the Secretary of the Interior when conditions warrant, particularly in relief cases.

5. PREFERENCE RIGHT, HOW SECURED.—A preference right over others to a permit may be obtained, under section 13 of the Act, by—

(*a*) Erecting upon the land desired, subsequent to the approval of the Act, a monument not less than 4 feet high, at some conspicuous place thereon, of such a size as to be visible to anyone who may be interested. The monument may be of iron, stone, or durable wood, not less than 4 inches square or in diameter, and must be firmly imbedded in the ground.

(*b*) Posting on or near said monument a notice stating that an application for permit will be made within thirty days after date of posting said notice, the notice to give the date and hour of posting, to be signed by the applicant, and give such a general description of the land to be covered by the permit, by reference

to courses and distances from such monument and other natural objects and permanent monuments, as will reasonably identify the land. The area, approximately, must also be stated, and the notice must be so protected as to prevent its destruction by the elements. The preference right will exist for thirty days after the date of posting such notice, and if no application is filed within that time, the land will be subject to any other application for permit or to other disposal.

(c) In cases of conflict between a preference right application, and one filed without any claim of preference, the priority of the initiation of the claim will govern, for example, the filing of a proper application in the Land Office prior to the posting of notice by another, as aforesaid, will give a prior right.

6. FORM AND REQUIREMENTS OF PERMIT.—A permit will confer upon the recipient the exclusive right to prospect for oil or gas upon the lands embraced therein, provided he complies with the terms thereof, which permit will be, in form and substance, substantially as follows:

FORM OF PERMIT.

THE UNITED STATES OF AMERICA.

DEPARTMENT OF THE INTERIOR.

General Land Office.

U. S. Land Office.....

Serial Number.....

Know all men by these presents, That the Secretary of the Interior, under and by virtue of the Act of Congress entitled, "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, has granted and does hereby grant a permit to granting the exclusive right for years from date hereof to prospect for oil or gas, but for no other purpose, the following described lands: , upon the express conditions following:

1. To mark each of the corners of the claim within ninety days from date hereof with substantial monuments so that the boundaries can be readily traced on the ground, and post in a conspicuous place, upon the lands covered hereby, a notice that such a permit has been granted, and a description of the lands covered by this permit.

2. Within six months (two years in Alaska) from date hereof to install upon some portion of the lands a substantial and adequate drilling outfit and to commence actual drilling operations.

3. Within one year (three years in Alaska) from date hereof to drill one or more wells, not less than 6 inches in diameter to a depth of at least 500 feet each, unless valuable deposits of oil or gas shall be sooner discovered.

4. Within two years (four years in Alaska) from date hereof to drill one or more wells to a depth of at least 2,000 feet, unless valuable deposits of oil or gas shall be sooner discovered.

5. Not to drill any well within 200 feet of any of the outer boundaries of the lands covered by this permit unless the adjoining lands have been patented or the title thereto otherwise vested in private owners.

6. To carry on all operations hereunder in accordance with approved methods and practice; to use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by permittee to the oil sands or oil-bearing strata to the destruction or injury of the oil deposits, and to carry out, at the expense of the permittee, all reasonable orders of the Secretary of the Interior relative to prevention of waste and preservation of property, and to comply with such regulations as may be issued by the Secretary of the Interior as to methods of operation.

7. To furnish and maintain during the period of this permit a bond with qualified corporate surety, in the sum of \$——, conditioned against the failure of the permittee to repair promptly, so far as possible, any damage to the oil strata or deposits resulting from improper methods of operation.

8. That this permit is granted upon the express condition that the right is reserved to the Secretary of the Interior to permit

upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands covered hereby, as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in the act under which this permit is granted.

9. The granting of this permit shall not preclude the allowance of entry, location, or selection of any of the lands included therein, where such entry, selection, or location is made with a reservation of the mineral deposits to the United States.

10. That until this permittee shall apply for a lease to one-quarter or more of the area included herein, he shall pay to the United States 20 per cent of the gross value of all oil or gas secured by him from the lands and sold or otherwise disposed of, or held by him for sale or other disposition.

11. The Secretary of the Interior reserves the right and authority to cancel this instrument for failure of the permittee to comply with any of the conditions enumerated herein or to exercise due diligence in the work of development.

Valid rights existing at the date of this permit will not be affected thereby.

Dated this day of 19.....

.....,
Secretary of the Interior.

7. **EXTENSION OF LIFE OF PERMIT.**—If for any good reason the permittee is unable, with the exercise of diligence, to test the land within two years, application for extension for not to exceed two years may be filed within the life of the permit, and must be accompanied by a showing under oath, corroborated, as to the causes that make such extension necessary, and as to what efforts have been made to comply with the condition of the permit; ordinarily no extension will be granted in the absence of the minimum amount of drilling required by the permit. This application should be addressed to the Secretary of the Interior, and be filed either in the district land office or in the General Land Office. This privilege is not applicable to Alaska.

8. **REWARD FOR DISCOVERY.**—Upon establishing to the satisfac-

tion of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in the permit, within the period of the permit or extension thereof, the permittee is entitled (a) to a lease of one-fourth of the land included in the permit, on a royalty of 5 per cent, or for at least 160 acres if there be that area in the permit; (b) to a preference right to a lease for the remainder of the land covered by his permit at such royalty as may be fixed by the Secretary of the Interior, not less than $12\frac{1}{2}$ per cent in amount or value of the production, or the Secretary may, in his discretion, offer said land for lease at a royalty to be determined by competitive bidding, the preference right claimant to have the refusal of a lease at a royalty equivalent to that offered by the highest responsible bidder.

9. PENALTY FOR DEFAULT.—The permit will be subject to cancellation by the Secretary of the Interior for failure of the permittee to comply with any of the conditions enumerated therein or to exercise due diligence in the work of development.

In the absence of discovery of oil or gas within the period of the permit, or extension thereof, the permit will thereupon terminate and the lands or deposits will automatically revert to their original status, but the land will continue segregated pending action by the Land Department on any application for extension that is timely filed.

10. PERMITS IN ALASKA.—The foregoing rules and regulations generally will apply to permits in Alaska, under section 13 of the Act, but with some modifications, viz: .

(a) A person, association, or corporation is authorized to hold five permits at one time in said territory, and subdivision (c) of section 4 of these regulations is not applicable. The applicant must show, in lieu thereof, that he does not hold an interest in more than four permits or leases in Alaska.

(b) The preference right treated under section 5 of these regulations extends for a period of six months after the erection of monument and posting of notice provided for therein, and the period for marking of the corners is extended to one year after the granting of the permit.

(c) The time for exploratory work in Alaska is four years, in-
M. O. R.—22.

stead of two, and there is no provision for extension of such period. The various items necessary in this exploratory work are set forth in the form of permit herein provided, the Alaskan period being included in parentheses, after the period prescribed in the States.

11. PERMITS FOR RESERVED DEPOSITS.—The deposits of oil and gas in all lands for which a patent has issued with a reservation of the oil and gas to the United States, subject to the preference right, if any, explained in the next succeeding section hereof, may be included in a permit under the provisions of this Act, conditioned upon the permittee filing with the Secretary of the Interior a satisfactory bond or undertaking as security for the payment of all damages to crops and improvements on such lands by reason of prospecting, as required by the Act of July 17, 1914 (38 Stat., 509).⁵

12. PREFERENCE RIGHT TO OWNER OF SURFACE.—A preference right to a permit is given to an owner or entryman of the land with a reservation of the oil deposits to the United States, under the following conditions: (a) The land must have been withdrawn or classified as oil or gas lands; (b) entry must have been bona fide and made prior to such withdrawal or classification, and prior to the date of the Act; (c) in case of an assignment, same must have been prior to January 1, 1918; (d) the land must not be claimed under any railroad grant.

(a) Should an application for permit for such lands be filed by a person other than the owner of the land, the applicant will be required to serve personal notice of such application upon the owner or owners of the land so patented, with a warning therein that if said owner desires to exercise his preference right, if any, to a permit, he must file within thirty days his application there-

⁵ This first paragraph of sec. 12 as issued March 11, read:

12. PREFERENCE RIGHT TO OWNER OF SURFACE.—A preference right to a permit is given to an owner of the land with a reservation of the oil deposits to the United States, under the following conditions: (a) The land must have been withdrawn or classified as oil or gas lands; (b) entry must have been bona fide and made prior to such withdrawal or classification; (c) land must have been patented prior to the date of the Act with a mineral reservation to the United States; (d) in case of an assignment, the land must have been transferred or assigned prior to January 1, 1918.

for in the proper local Land Office. The applicant must furnish evidence of the service of notice on the owner and evidence that the party served is the owner of the land involved, either by his affidavit, duly corroborated, or by certificate of the officer in whose office transfers of real property are to be recorded.

(b) The preference-right applicant must show that he is entitled under the section above outlined, together with his qualifications to hold a permit as previously set forth in these regulations, and if such an application be filed, the Secretary of the Interior will award the permit to the party entitled thereto.

(c) The preference right of those owning lands coming within the provisions hereof will exist until exercised by the claimant or until an adverse application has been filed, due notice given in accordance with these regulations, and the permit awarded to one or the other of the applicants.

(d) Any claimants to lands of this character may combine their holdings for the purpose of making joint application for a permit, provided the aggregate area does not exceed 2,560 acres and that all the lands for which application is made are within an area of 6 miles square, or within the same township.

(e) The right of a permittee under a preference-right permit to a lease after discovery is governed by other provisions of the Act, as set forth in section 8 of these regulations.

II. Oil and Gas Leases.

13. DESIGNATION AND OFFER OF LANDS FOR LEASE.—Pursuant to the provisions of section 17 of the Act, the unappropriated deposits of oil or gas situated within known geologic structures of producing oil or gas fields, and the lands containing same, will be divided into leasing blocks or tracts in areas not exceeding 640 acres each, and not exceeding in length two and one-half times their width, and offered for lease at a stated royalty by competitive bidding to the highest responsible bidder having the qualifications prescribed by section 15, paragraph (a), hereof.

14. NOTICE OF LEASE OFFER.—Notice of the offer of lands for lease will be given by publication in a newspaper of general circulation in the county in which the lands or deposits are situated for a period of thirty days; such notice will state the day and

hour on which the offering will be made at public auction at the United States Land Office of the district in which the lands are situated, to the qualified bidder offering the highest bonus for the lease at the stated rental and royalty. Copy of the notice will be posted in said local office during the period of publication. This notice will be published at the expense of the government. All bidders at any such auction are warned against violation of the provisions of section 59 of the United States Criminal Code, approved March 4, 1909, prohibiting unlawful combination or intimidation of bidders.

15. AUCTION OF LEASE.—At the time fixed in the notice, the register or receiver will, by public auction, offer the land for lease on the terms and conditions as to payments of royalties and rents fixed in the notice, to the qualified bidder of the highest amount offered as a bonus for the privilege of leasing the land. The successful bidder must deposit with the receiver on the date of the sale, certified check on a solvent bank, or cash, for one-fifth the amount bid by him, which payment the receiver will credit to "Trust funds—Unearned moneys." At the time of such payment, the successful bidder will also file the requisite showing of his qualifications to receive a lease, which shall include the following:

(a) Proof of citizenship of applicant; by affidavit of such fact, if native born, or if naturalized, by certified copy of the certificate of naturalization, on the form provided for use in public land matters, unless such copy is already on file; if a corporation, by certified copy of the articles of incorporation "and a showing as to the residence and citizenship of its stockholders."⁶

(b) The affidavit of the bidder or the affidavit of one of the officers of a corporate bidder that the bidder does not hold another lease in the geologic structure of the same producing oil or gas field, nor more than two leases, or a lease and a permit, in the

⁶ Instead of the words "and a showing as to the residence and citizenship of its stockholders" the original read:

"and evidence that none of its stockholders are citizens of another country, the laws, customs, and regulations of which deny similar or like privileges to citizens or corporations of this country."

State, except under sections 18, 18a, 19, and 22 of the Act, and also that the acceptance of the lease by such successful bidder will not be in violation of the provisions of section 27 of the Act relative to excess holdings by individuals or corporations.

The register and receiver will thereupon transmit such showing, together with a report of the proceedings had at the auction, by special letter to the Commissioner of the General Land Office.

16. AWARD OF LEASE.—On receipt of the report of the auction from the register and receiver, the Secretary of the Interior will take action thereon, and either award the lease to the successful bidder or reject same, notice of which will be forthwith transmitted to the bidder through the local office. If the lease shall be awarded, the notice will be accompanied by copies of leases for execution by the lessee, who shall, within thirty days from receipt of such notice, execute said lease in triplicate, and pay to the receiver the balance of the bonus bid by him, together with the first year's rental, and also cause to be filed in the Land Office the bond required by Section 2 (a) of the lease; in lieu of such bond, Liberty bonds will be taken at par in the amount of the bond, as provided in the Act of February 24, 1919 (40 Stat., 1148). If the bid be rejected, the receiver will return, by his official check, the deposit made at the auction. In case of the award of a lease and failure on the part of the bidder to execute same, and otherwise comply with the applicable regulations, the deposit made will be considered forfeited and disposed of as other receipts under this Act.

17. FORM OF LEASE.—The lease referred to in the preceding sections will be in form and substance, substantially as follows:

FORM OF OIL AND GAS LEASE.

U. S. Land Office.....

Serial No.....

DEPARTMENT OF THE INTERIOR.

Lease of oil and gas lands under the Act of February 25, 1920.

Date —Parties.—This indenture of lease entered into, in triplicate, this day of A. D. 19...., by and between the

United States of America, acting in this behalf by the Secretary of the Interior, party of the first part, hereinafter called the lessor, and of, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the Act of Congress approved February 25, 1920, Public No. 146, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," hereinafter referred to as the Act, which is made a part hereof, witnesseth:

SECTION 1. *Purposes.*—That the lessor in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits in or under the following described tracts of land situated in the county of, State of, and more particularly described as follows: containing acres, more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment hereof, for a period of 20 years, with the preferential right in the lessee to renew this lease for successive periods of 10 years, upon such reasonable terms and conditions as may be prescribed by the lessor, unless otherwise provided by law at the time of the expiration of such periods.

SEC. 2. In consideration of the foregoing, the lessee hereby agrees:

(a) *Bond.*—To furnish a bond with approved corporate surety in the penal sum of \$5,000, conditioned upon compliance with the terms of the lease.

(b) *Commence drilling.*—The lessee agrees, within three months from delivery of executed lease, to proceed with reasonable diligence to install on the leased ground a standard or other efficient drilling outfit and equipment, and to commence drilling at least one well, and to continue such drilling with reasonable diligence to production, or to a point where the well is demonstrated unsuccessful, and thereafter to continue drilling with rea-

sonable diligence at least one well at a time until the lessee shall have drilled wells equal in number to the number of forty-acre tracts embraced in the leased premises, unless the lessor shall, for any reason deemed sufficient, consent in writing to the drilling of a less number of wells; the lessee further agrees to drill all necessary wells fairly to offset the wells of others on adjoining land or deposits not the property of the United States.

(c) *Royalty and rents.*—To pay the lessor in advance, beginning with the date of the execution of this lease, a rental of one dollar per acre per annum during the continuance hereof, the rental so paid for any one year to be credited on the royalty for that year, and, in addition to such rental, a royalty of — per cent of the value of oil or gas produced from the land leased herein (except oil or gas used for production purposes on said lands or unavoidably lost), or, on demand of the lessor, — per cent of the oil or gas produced (except oil or gas used for production purposes on said lands, or unavoidably lost), in which case credit for rent shall be on the basis of the current field price of oil, the royalty, when paid in value, to be due and payable monthly on the 15th of each month following the month in which produced, to the receiver of public moneys of the proper land district; and when paid in kind, to be delivered in the field where produced at such times, and in such manner as may be required by the lessor; such royalties, whether in value or kind, shall be subject to reduction whenever the average daily production of any oil well shall not exceed ten barrels per day, if in the judgment of the lessor the wells can not be successfully operated upon the royalties fixed herein.

“(d) *Sales contract.*—To file with the Secretary of the Interior copies of all sales contracts for the disposition of oil and gas produced hereunder except for production purposes on the land leased, and in the event the United States shall elect to take its royalties in money instead of in oil or gas, not to sell or otherwise dispose of the products of the land leased except in accordance with a sales contract or other method first approved by the Secretary of the Interior.⁷

⁷This paragraph *d* before amendment read:

(d) *Sales contract.*—Not to sell or otherwise dispose of any of the oil

(e) *Monthly statement.*—To furnish monthly statements in detail in such form as may be prescribed by the lessor, showing the amount and value of all oil and gas produced and saved during the preceding calendar month as the basis for computing the royalty due the lessor. The leased premises and all wells, improvements, machinery, and fixtures thereon or connected therewith and all books and accounts of the lessee shall be open at all times for the inspection of any duly authorized officer of the department.

“(f) *Plats and reports.*—To furnish annually and at such other times as the Secretary shall require, in the manner and form prescribed by the Secretary of the Interior, a plat showing all development work and improvements on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands, accompanied by a report in detail as to the stockholders, investment, depreciation.⁸

(g) *Log of wells.*—To keep a log in the form prescribed by the Secretary of all the wells drilled by the lessee, showing the strata and character of the ground passed through by the drill, which log, or copy thereof, shall be furnished to said lessor on demand.

(h) *Diligence—Prevention of waste—Health and safety of workmen.*—To exercise reasonable diligence in drilling and operating wells for the oil and gas on the lands covered hereby, while such products can be secured in paying quantities, unless

or gas produced hereunder, except for production purposes on the land leased, other than under and in accordance with a sales contract or other method, that shall first be approved by the Secretary of the Interior.

⁸ Paragraph f first read:

(f) *Plats and reports.*—To furnish annually, and at such other time as the Secretary shall require, in the manner and form prescribed by the Secretary of the Interior, a plat showing all development work and improvements on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands, accompanied by a report in detail as to the stockholders, business transacted, investment, depreciation, cost of operation, assets, and liabilities of the lessee, together with a statement as to the amount and grade of oil and gas produced and sold, amount received therefor, and the amount in storage by operations hereunder.

consent to suspend operations temporarily is granted by the Secretary of the Interior; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the oil sands or oil-bearing strata to the destruction or injury of the oil deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely any well before abandoning the same so as to effectually shut off all water from the oil or gas bearing strata; not to drill any well within 200 feet of any of the outer boundaries of the lands covered hereby, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners; to conduct all mining, drilling, and related productive operations subject to the inspection of the lessor; to carry out at expense of the lessee all reasonable orders and requirements of lessor relative to prevention of waste, and preservation of the property and the health and safety of workmen, and on failure so to do the lessor shall have the right to enter on the property to repair damage or prevent waste at the lessee's cost; to abide by and conform to regulations in force at the time the lease is granted covering the matters referred to in this paragraph.

(i) *Taxes and wages—Freedom of purchase.*—To pay when due, all taxes lawfully assessed and levied under the laws of the State upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

(j) *Reserved deposits.*—To comply with all statutory requirements and regulations thereunder, if the lands embraced herein have been or shall hereafter be disposed of under laws reserving to the United States the deposits of oil and gas therein, subject to such conditions as are or may hereafter be provided by the laws reserving such oil or gas.

(k) *Excess holdings.*—To observe faithfully the provisions of

section 27 of the Act defining the interest or interests that may be taken, held, or exercised under leases authorized by said Act.

(l) *Assignment of lease.*—Not to assign this lease or any interest therein, nor sublet any portion of the leased premises, except with the consent in writing of the Secretary of the Interior first had and obtained.

(m) *Deliver premises in case of forfeiture.*—To deliver up the premises leased, with all permanent improvements thereon, in good order and condition in case of forfeiture of this lease.

SEC. 3. The lessor expressly reserves:

(a) *Rights reserved—Easements and rights of way.*—The right to permit for joint or several use such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same or of other lands containing the deposits described in said Act, and the treatment and shipment of products thereof by or under authority of the government, its lessees or permittees, and for other public purposes.

(b) *Disposition of surface.*—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted in so far as said surface is not necessary for the use of the lessee in the extraction and removal of the oil and gas therein.

(c) *Pipe lines to convey at reasonable rates.*—The right to require the lessee, his assignee, or beneficiary, if owner, or operator, or owner of a controlling interest in any pipe line, or any company operating the same which may be operated accessible to the oil derived from lands under such lease, to accept and convey at reasonable rates and without discrimination the oil of the government or of any citizen or company, not the owner of any pipe line, operating a lease or purchasing oil or gas under the provisions of this Act.

(d) *Monopoly and fair prices.*—Full power and authority to carry out and enforce all the provisions of Section 30 of the Act, to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, to prevent monopoly, and to safeguard the public welfare.

(e) *Helium.*—Pursuant to Section 1 of the Act, the lessor re-

serves the right to take all helium from any gas produced under this lease, but the lessee shall not be required to extract and save the helium for the lessor; in case the lessor elects to take the helium, the lessee shall deliver all gas containing same, or portion thereof desired, to the lessor in the manner required by the lessor, for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof; *provided*, that the lessee shall not, as a result of the operation in this section provided for, suffer a diminution in value of the gas from which the helium has been extracted, or loss otherwise, for which the lessee is not reasonably compensated, save for the value of the helium extracted; the lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

SEC. 4. *Surrender and termination of lease.*—The lessee may, on consent of the Secretary of the Interior first had and obtained in writing, surrender and terminate this lease upon the payment of all rents, royalties, and other obligations due and payable to the lessor, and upon payment of all wages and moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made full provision for conservation and protection of the property; upon like consent had and obtained the lessee may surrender any legal subdivisions of the area included herein.

SEC. 5. *Purchase of materials, etc., on termination of lease.*—Upon the expiration of this lease, or the earlier termination thereof pursuant to the last preceding section, the lessor or another lessee may, if the lessor shall so elect within six months from the termination of the lease, purchase all materials, tools, machinery, appliances, structures, and equipment placed in or upon the land by the lessee, on the payment to the lessee of such sum as may be fixed as a reasonable price therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee,

and the other by the two so chosen; pending such election all equipment shall remain in normal position. If the lessor, or another lessee, shall not, within six months, elect to purchase all of such materials, tools, machinery, appliances, structures, and equipment, or shall elect to purchase only a part thereof, the lessee shall have the right at any time within ninety days to remove from the premises herein all of the said materials, tools, machinery, appliances, structures, and equipment, or such part thereof as the lessor, or other lessee, may not have elected to purchase, save and except casing in wells and other equipment or apparatus necessary for the preservation of the well or wells.

SEC. 6. *Judicial proceedings in case of default.*—If the lessee shall fail to comply with the provisions of the Act, or make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or of the general regulations promulgated and in force at the date hereof, and such default shall continue after service of written notice thereof by the lessor, then the lessor may institute appropriate judicial proceedings for the forfeiture and cancellation of this lease in accordance with the provisions of Section 31 of said Act; but this provision shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any other cause of forfeiture, or for the same cause occurring at any other time.

SEC. 7. *Heirs and successors in interest.*—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

SEC. 8. *Unlawful interest.*—It is also further agreed that no Member of, or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom, and the provisions of Section 3741 of

the Revised Statutes of the United States, and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat., 1109), relating to contracts enter into and form a part of this lease so far as the same may be applicable.

In witness whereof

THE UNITED STATES OF AMERICA,

By [L. S.]

Witness:

..... [L. S.]
..... [L. S.]
..... [L. S.]

III. Relief Measures.

Sections 18, 19, and 22 of the Act provide for the "relief," so-called, of certain defined claimants of oil and gas lands, who at date of the Act had not perfected their claims under the pre-existing mining laws, and are prevented from doing so by withdrawal of the land or by this Act.

18. CONDITIONS FOR RELIEF UNDER SECTION 18:

(a) That the land claimed must have been included in the executive order of withdrawal of September 27, 1909, and must have remained so withdrawn.

(b) That the claim must have been initiated under the placer mining laws prior to July 3, 1910, and claimed and possessed continuously from that time.

"(c) That no claimant who has acquired any interest in the land since September 1, 1919, from another claimant who, on that date or since that time, was or is claiming or holding more than the maximum allowed a claimant under section 18 of the Act, may secure a lease under section 18, or any interest therein. This limitation does not, however, apply to an exchange of an interest in such lands made prior to January 1, 1920, which did not increase or reduce the area or acreage held or claimed in excess of the maximum by either party to the exchange."⁹

⁹ Paragraph c before substitution read:

(c) That claimant's interest in the land must have been acquired prior to September 1, 1919, except lands acquired by exchanges made prior to

(d) That claimant or predecessors must have drilled an oil or gas well on the land to discovery.

(e) That all conflicting claims¹⁰ asserted prior to July 1, 1919, must have been disposed of, as provided in section 28 hereof or otherwise.

(f) That no claimant who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.¹¹

(h) That claimant must, on or before August 25, 1920, file a relinquishment to the United States of all right, title, and interest in and to the land, together with an application for a lease. This relinquishment must be in the form of an unconditional quitclaim deed, duly executed and acknowledged, but not recorded, and when filed will be held for such action as the facts and the law in the case warrant and require.

(i) That claimant must pay for one-eighth of the value at the time of production of all oil and gas produced prior to date of filing relinquishment and application for relief, exclusive of oil and gas used on the land for production purposes, or unavoidably lost.

19. RELIEF THAT MAY BE GRANTED UNDER SECTION 18:

(a) *Lands not in naval petroleum reserves.*—A qualified claimant, upon complying with the provisions of the Act and these regulations, will be entitled to a twenty-year lease from the United States, commencing and effective as of the date of filing relinquishment and application for relief, substantially in the form prescribed in section 17 hereof, at a royalty to be fixed by the Secretary of the Interior, but not less than 12½ per cent of all oil and gas produced exclusive of that used for pro-

the 1st day of January, 1920, which did not increase or reduce the acreage held or claimed in excess of the maximum by either party.

¹⁰ The word "asserted" before amendment read "initiated."

¹¹ Paragraph *g* was stricken out with no substitution. It read as follows:

(g) That all parties having an interest in the claim by stock ownership, stock holding or stock control, must be citizens of the United States, or of a country, the laws, customs, or regulations of which do not deny like or similar privileges to citizens or corporations of the United States.

duction purposes on the claim, or unavoidably lost. There is, however, a limitation placed by the Act upon the acreage that may be included in such lease. If the geologic oil or gas structure of the producing field in which the claim is situated does not exceed 640 acres in area the lease may include the entire area if covered by the claim; but if the area of such structure exceeds 640 acres the Act provides that not more than one-half of the area, same to be selected by the claimant but in no case to exceed 3,200 acres, may be leased to any one claimant.

(b) *Lands in naval petroleum reserves.*—If the land claimed is within a naval petroleum reserve the claimant will be entitled to lease only the producing wells on the claim, together with an area of land sufficient for the operation of such wells, upon a royalty to be fixed by the Secretary of the Interior but not less than $12\frac{1}{2}$ per cent of the production except that used for production purposes on the claim or unavoidably lost. The Act forbids the drilling of any wells in lands subject to this provision within 660 feet of the leased wells without the consent of the lessee. It further provides that the President may, in his discretion, lease the remainder or any part of the claim on which such wells have been drilled, and in the event of such leasing the claimant shall have a preference to such lease. The President may also permit the lessee of any well to drill additional wells within the limited area of 660 feet upon such terms and conditions as he may prescribe. These terms and conditions can not be prescribed here, but will be determined on the merits in each separate case.

“(c) *Royalties.*—The royalties payable under leases granted pursuant to section 18 of the Act are cumulative, and are hereby determined and prescribed as follows: ¹²

¹² Paragraph c before substitution read:

(c) *Royalties.*—The royalties payable under leases granted pursuant to section 18 of this act are hereby determined and prescribed as follows:

For all oil of 30 degrees Baumé or over, upon each claim on which the wells average 200 barrels or more per day per month, $33\frac{1}{3}$ per cent; upon each claim on which the wells average from 100 to 200 barrels per day per month, 25 per cent; upon each claim on which the wells average from 50 to 100 barrels per day per month, 20 per cent; upon each claim on which the wells average from 20 to 50 barrels per day per month, $16\frac{2}{3}$ per cent,

"For all oil produced of 30 degrees Baumé or over upon each claim on which the wells average not exceeding 20 barrels per day for the calendar month, $12\frac{1}{2}$ per cent; upon each claim on which the wells average more than 20 barrels and not more than 50 barrels per day for the calendar month, $16\frac{2}{3}$ per cent; upon each claim on which the wells average more than 50 barrels and not more than 100 barrels per day for the calendar month, 20 per cent; upon each claim on which the wells average more than 100 barrels per day for the calendar month, 25 per cent.

"For all oil produced of less than 30 degrees Baumé upon each claim on which the wells average not exceeding 20 barrels per day for the calendar month, $12\frac{1}{2}$ per cent; upon each claim on which the wells average more than 20 barrels and not more than 50 barrels per day for the calendar month, $14\frac{2}{3}$ per cent; upon each claim on which the wells average more than 50 barrels and not more than 100 barrels per day for the calendar month, $16\frac{2}{3}$ per cent; upon each claim on which the wells average more than 100 barrels per day for the calendar month, 20 per cent.

"Only wells which have a commercial production during at least a part of the month shall be considered in ascertaining the average production herein, and the Secretary of the Interior shall determine what are commercially productive wells under this provision.

"The royalties on gas produced, if any, will be fixed and determined in each lease."

20. CONDITIONS FOR RELIEF UNDER SECTION 19:

A. *For permit.*—(a) That the land must not be in a naval petroleum reserve.

and upon each claim on which the wells average less than 20 barrels per day per month, $12\frac{1}{2}$ per cent.

For all claims producing oil of less than 30 degrees Baumé, upon each claim on which the wells average 200 barrels or more per day per month, 25 per cent; on each claim on which the wells average 100 to 200 barrels per day per month, 20 per cent; upon each claim on which the wells average from 50 to 100 barrels per day per month, $16\frac{2}{3}$ per cent; upon each claim on which the wells average from 20 to 50 barrels per day per month, $14\frac{2}{3}$ per cent, and upon each claim on which the wells average less than 20 barrels per day per month, $12\frac{1}{2}$ per cent.

The royalties on gas produced, if any, will be fixed and determined in each lease.

(b) That applicant must have been an occupant or claimant of the land on October 1, 1919, under a claim initiated under the placer mining laws by him or his predecessor when the land was not withdrawn.

(c) That claimant, by himself or predecessor in interest, must have performed all acts under the preexisting laws necessary to valid locations, except to make discovery.

(d) That prior to February 25, 1920, claimant must have performed work or expended on or for the benefit of such locations an amount equal in the aggregate to \$250 for each location.

(e) That no claimant who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.¹³

(g) That claimant must, on or before August 25, 1920, file a relinquishment to the United States of all right, title, and interest in and to the land, together with an application for a permit. This relinquishment must be in the form of an unconditional quitclaim deed, duly executed and acknowledged, but not recorded, and when filed will be held for such action as the facts and the law in the case warrant and require.

B. For lease.—The conditions necessary to obtaining a lease under section 19 of the Act are identical with those outlined in paragraphs (a), (b), (c), (d), (e), (f), and (g), for permits, together with the following additional conditions:

(a) That claimant must have made a discovery of oil or gas on or before February 25, 1920.

(b) That claimant must not be entitled to relief on the land in question under section 18 of the Act.

(c) That claimant must pay for one-eighth of the past production up to date of filing application for relief, exclusive of that used on the land for production purposes or unavoidably lost.

¹³ Paragraph f which was stricken out read:

(f) That all parties having an interest in the claim by stock ownership, stock holding, or stock control, must be citizens of the United States or of a country the laws, customs, or regulations of which do not deny like or similar privileges to citizens or corporations of the United States.

M. O. R.—23.

21. RELIEF THAT MAY BE GRANTED UNDER SECTION 19:

(a) A claimant qualified under the above conditions relating to permits, upon complying with the provisions of the Act and these regulations, will be entitled to a prospecting permit upon the same terms, conditions, and limitations as to acreage, as other permits provided for in the Act, substantially in form prescribed in section 6 hereof.¹⁴

(b) A claimant qualified under the above conditions relating to leases is entitled to a twenty-year lease from the United States, effective from date of filing application for relief, substantially in the form prescribed in section 17 hereof, the royalty to be fixed by the Secretary of the Interior, but such royalty may not be less than $12\frac{1}{2}$ per cent of all oil and gas produced exclusive of that used for production purposes on the land or unavoidably lost. In the event the land is in the geologic structure of proven territory at the time of granting the permit under this section, the royalty required under the lease based thereon shall not be less than $12\frac{1}{2}$ per cent, but if at the time the permit is granted the land is not in proven territory, the amount of royalty will be governed by the general terms of the Act as set out in section 14 thereof.

22. ALASKA CLAIMS—CONDITIONS FOR RELIEF UNDER SECTION 22:

A. *For permit.*—(a) That claimant must have been an occupant or claimant of the land on February 25, 1920, under a claim initiated under the placer mining laws by claimant or predecessors prior to November 3, 1910, the date of the executive order withdrawing all public lands in Alaska containing petroleum deposits, including those in national forests.

(b) That claimant must have performed all acts prior to November 3, 1910, under the then existing laws necessary to valid locations except to make discovery.

(c) That claimant, (1) prior to November 3, 1910, must have made substantial improvements for the discovery of oil or gas

¹⁴ The last sentence of paragraph a, stricken out, read:

Only one permit for not exceeding 2,560 acres will be granted to the same person, association, or corporation; hence all claims for relief in the form of a permit should be embraced in a single application.

on or for each location, or (2) prior to February 25, 1920, expended not less than \$250 in improvements on or for the benefit.

(d) That claimant must on or before February 25, 1921, or within six months after final denial or withdrawal of application for patent, file a relinquishment to the United States of all right, title, and interest in and to the land, executed in the usual form. This relinquishment must be in the form of an unconditional quitclaim deed, duly executed and acknowledged, but not recorded, and when filed will be held for such action as the facts and the law in the case warrant and require.

In addition to the above, the conditions outlined in paragraphs (f) and (g) of sections 20 hereof, are applicable to relief in Alaska.

B. FOR LEASE.—The conditions necessary to obtaining a lease under section 22 of the Act are identical with those outlined in the paragraphs relating to permits in Alaska together with the following additional conditions:

(a) That claimant or predecessors must have drilled an oil or gas well on the land to discovery.

(b) That claimant must pay for one-eighth of the past production exclusive of that used on the land for production purposes or unavoidably lost.

23. ALASKA CLAIMS—RELIEF THAT MAY BE GRANTED UNDER SECTION 22:

(a) A claimant qualified under the above conditions relating to permits, upon complying with the conditions of the Act and these regulations will be entitled to prospecting permits under the same terms and conditions as other permits in Alaska provided for in section 13 of the Act, substantially in the form prescribed in section 6 hereof.

(b) A claimant qualified under the above conditions relating to leases is entitled to a lease substantially in the form prescribed in section 17 hereof, the rental and royalty to be fixed by the Secretary of the Interior and specified in the lease, subject to readjustment at the end of each twenty-year period of the lease.

(c) Only five permits or leases in the aggregate may be held at any one time by any claimant, and not more than 1,280 acres may be included in one permit under section 22 of the Act.

The following additional rule was added by the Secretary of the Interior, April 16, 1920, by Circular No. 687.

23½. *Who may apply.*—All proper parties to a claim for relief under sections 18, 19, or 22 of the act should join in the application, but, if for any sufficient reason that is impracticable, any person claiming a fractional or undivided interest in such claim may make application for a lease or permit, stating the nature and extent of his interest, and the reasons for nonjoinder of his co-owner or co-owners. In cases where two or more applications are made for the same claim or part of a claim, leases or permits will be granted to one or more of the claimants, as law and facts shall warrant and as shall be deemed just.

24. *BENEFICIARIES UNDER LEASES OR PERMITS.*—All leases or permits under sections 18, 19, and 22 shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear, subject to the same limitations as to area and acreage as is provided for claimant, but such persons will not necessarily be made parties to government leases, and may assert their rights in the courts. Disputes of this character are not to be confused with adverse claims based upon independent title, hereinafter referred to. (See section 28 hereof.)

25. *FORM AND CONTENTS OF APPLICATION.*—No set forms of application for a lease under sections 18, 19, or 22, or a permit under sections 19 and 22 of the Act can be prescribed because the facts and circumstances pertaining to claims for relief are so varied. Applications for such leases or permits must be made under oath and the supporting documents and papers certified or under oath so far as practicable. The application, with all the accompanying papers, should be filed in the United States Land Office of the district in which the land is situated. Applications and supporting papers need not be executed in duplicate, but one complete copy of each application and supporting papers (except abstract of title) should be filed with the application, which copy will be transmitted by the register and receiver to the Chief of Field Division and notation to that effect made on the original. The application should contain full information as to the facts upon which the applicant relies for relief, covering

the following points and such additional matters as may, from the peculiar facts in the case, be material in the establishment of his claim under the law:

(a) *Date of application for lease or permit.*

(b) *Applicant's name and post-office address.*

(c) *Description of land.*—The land for which the application is made must be described by legal subdivisions of section, township, and range, if surveyed; if not surveyed, then by metes and bounds and courses and distances from some permanent monument. If the application is for a lease of unsurveyed land, the applicant, after he has been awarded the right to a lease, but before issuance thereof, will be required to deposit with the United States surveyor general of the State in which the land is situated the estimated cost of making a survey of the land, the balance, if any, after the survey is completed to be returned.

(d) *Origin and basis of applicant's claim for relief.*—The applicant must bring his claim clearly within all the requirements of the act as specifically pointed out in sections 18, 20, and 22 of these regulations. Every application must be supported by a duly certified abstract of title to the land, brought up to the date of filing the application. In the event an abstract of title is already on file in the Land Department, a supplemental abstract extending over the period or periods not covered by the former, may be furnished, and if furnished will be considered in connection with the abstract already on file. If any fraud has been committed in connection therewith, then a full affirmative showing must be made by the applicant to the effect that he has not been a party to such fraud, and that he has not been guilty of any fraud or had knowledge of fraud or reasonable grounds to know of any fraud in connection with his claim. If an application for patent has been filed, a brief résumé of the actions taken thereon should be stated. If the land is or has been involved in litigation in the Courts, to which the United States is a party, the status or result of such litigation should be furnished.

(e) *Particulars as to conflicting claims or interests.*—All conflicting or disputed claims, if any, to the land or production

therefrom, specifying the character and extent of such interests, must be shown.

(f) *Discovery*.—Before a lease may be awarded under the relief sections of the Act it must be satisfactorily shown that the applicant or his predecessors have drilled a well to a substantial and certain discovery of oil or gas in a producing stratum on the land covered by the location under which the applicant is asserting his claim.

(g) *Wells, improvements, and production*.—With each application for a lease under sections 18, 19, or 22 of the act there must be filed a complete and detailed statement showing the number, depth, condition, and present daily production of all wells drilled on the land by the applicant and his predecessors in interest, and the nature and extent of all other improvements placed thereon by them.

With each application for a permit under sections 19 or 22 of the Act, a description of the work performed and improvements made upon or for the benefit of the location by the applicant and his predecessors must be filed, together with an itemized statement of the cost thereof. If the application is made under section 22, the date the work was performed or the improvements made must also be shown.

In either case applicant must show the position of all wells and improvements by courses and distances from the nearest corner of the public land survey, if the land is surveyed; if not surveyed, then from a corner of the claim. This may be shown by means of a diagram.

(h) *Amount and value of past production*.—Claimant must furnish a complete detailed statement, by months, of all past production from the land, up to the date of filing the application and relinquishment, showing (1) the grade and total quantity of oil and gas produced; (2) the amount sold or otherwise disposed of, to whom sold, and the selling price or other consideration received therefor; (3) a statement of the grade and amount of any and all such production held in storage, when produced, and the value at time of production; and (4) the amount consumed for production purposes on the land, or unavoidably lost.

Copies of any and all contracts under which oil or gas pro

duced from the land has been or is being sold or otherwise disposed of must be furnished.¹⁵

“(i) *Inspection of records.*—The agreement on the part of the applicant to permit the inspection of any and all books, records, and accounts having any bearing on the data or information required by the application and to furnish copies or abstracts of such books, records, or accounts, on demand.”¹⁶

“(j) *Interest in other leases and permits.*—The applicant will also furnish a complete statement of all lands for which he has filed application for lease or permit under sections 18, 19, and 22 of the act, and of such lands as are included in other applications in which he has any direct or indirect interest, together with a full disclosure of such interest by stock ownership or otherwise. If the applicant is a corporation, a certified copy of its articles of incorporation must be furnished, and a full disclosure made of the ownership of its stock, whether such stock is owned, held, or controlled directly or indirectly by any other person or corporation, who or which is an applicant for or a holder of a lease under said sections, and, in the event of such ownership, a description of the legal subdivisions of all the lands affected thereby is required. In the event the lands so affected are not surveyed they may be described by the usual method of courses and distances and acreage.

“(k) *Limitation of area.*—Applications for lease under section 18 of the Act should disclose all other applications, in which the applicant is directly or indirectly interested, for lease under said section for lands (describing same) in the same geologic structure; and applications under section 22 of the act should show all other applications for leases or permits under said section. The boundaries of the geologic structures of the various producing fields will be determined and announced by

¹⁵ The first line of the last paragraph of *h* was stricken out. It read: “The statement of sales should be corroborated by the purchasers.”

¹⁶ Paragraph *i* before substitution read:

(i) *Investment and cost of operation.*—The applicant should make a full showing as to (1) the actual cost of wells, improvements, and equipment for the development of and operation upon the land; (2) the present value of such wells, improvements, and equipments; and (3) the present cost of operation.

the United States Geological Survey under supervision of the Secretary of the Interior, and such information will be placed on file in all United States Land Offices." ¹⁷

26. PAYMENT OF ROYALTY ON PAST PRODUCTION.—The application must be accompanied by a certified check in the amount of one-eighth of the gross value of all oil and gas produced and sold or held in storage, as per the statement required in paragraph 25 (h). All such sums will be held by the receiver in his account of "Trust Funds—Unearned Moneys" to await instructions as to their disposition. In lieu of the certified check herein required, the applicant may be permitted to deposit a bond by approved surety company in an amount not less than one-eighth of the estimated gross value of all oil and gas produced and sold or held in storage, securing the payment to the United States within thirty days from the award of the lease of the cash value of the past production due the United States under this Act. In cases where the proceeds, or part thereof, of such past production have been deposited in escrow, pursuant to operating agreements under the Act of August 25, 1914 (38 Stat., 708), or where in suits brought by the government affecting such lands the proceeds of production, or part thereof, have been impounded in the custody of receivers, a formal tender may be made of the funds so held in escrow or impounded to the extent available or in the amount necessary, as the case may be, in lieu of such cash payment. In such cases the interest accumulating on such escrowed or impounded moneys after the tender is made will go to the government.

¹⁷ Paragraph *k* before substitution read:

(*k*) *Limitation of area.*—The application should show that the area applied for together with any other areas for which the applicant has made application for a lease or permit or in which he is directly or indirectly interested, is not in excess of the limitations provided in sections 18, 19, or 22 of the Act, as the case may be, as to the maximum area that may be leased to any one person or corporation within the same geologic oil or gas structure. (See secs. 19, 21, and 23 hereof.) The boundaries of the geologic structures of the various producing fields will be determined and announced by the United States Geological Survey under supervision of the Secretary of the Interior and such information will be placed on file in all United States Land Offices.

Operating contracts made under the provisions of the Act of August 25, 1914, *supra*, and in operation at the time of such tender, will not be terminated until the entire transaction of granting a lease and payment of royalty on past production shall have been consummated; nor will the Department of Justice be requested to dismiss any suits involving the land affected until the application for a lease has been adjudicated and approved; whereupon, after the suit has been dismissed and the impounded money tendered paid over to the government, the lease will be executed and delivered.

27. PUBLICATION OF NOTICE.—Immediately upon the filing of an application for a lease or permit under sections 18, 19, or 22 of the Act, the register and receiver will cause to be published, at the expense of the applicant, in a newspaper designated by the register, published in the vicinity of the land and most likely to give notice to the general public, a notice of the said application in substantially the following form:

PUBLISHED NOTICE OF APPLICATION.

DEPARTMENT OF THE INTERIOR.

UNITED STATES LAND OFFICE.

.....,

....., 19.....

Notice is hereby given that of, has applied for an oil and gas under section of the act of February 25, 1920 (Public, No. 146), for section, township of range, meridian, County, State of Any and all persons having adverse or conflicting claims to said land are hereby notified that a full statement, under oath, of such claim should be filed in this office¹⁸ showing a superior right to a permit or lease under said act or in lieu of such application, a showing of a valid existing adverse or conflicting claim to the land or the minerals therein under the public land laws, on or

¹⁸ The words "together with an application" following "this office" were struck out.

before; otherwise such claim may be disregarded in granting the permit or lease applied for.

.....,

Register.

The register and receiver will fix a date in the notice on or before which adverse or conflicting claims may be asserted, which date should be not less than thirty nor more than forty days after the date of first publication of the notice.

Such notice will be published in the regular issue and not in any supplement of the newspaper, once each week for a period of five consecutive weeks if in a weekly paper, or if in a daily paper for a period of thirty days. The register and receiver will post a copy of said notice in a conspicuous place in their office during the period of publication.

Upon the applicant's furnishing satisfactory proof of such publication, but not earlier than the day following that set in the published notice on or before which adverse or conflicting claims were to be filed, the register and receiver will transmit by special letter all papers in the case including any adverse or conflicting claims that may have been filed, together with proof of posting said notice in their office, to the Commissioner of the General Land Office.

28. ADVERSE OR CONFLICTING CLAIMS—PROCEDURE.—In case of adverse or conflicting claims for leases under sections 18, 19, or 22, or permits under sections 19 or 22, the Secretary of the Interior is clothed with authority to grant leases or permits, as the case may be, to one or more of them as shall be deemed just.

(a) To have their claims considered in connection with the awarding of leases or permits it will be necessary for adverse claimants to make full showing (1) of a superior right to a lease or permit under this Act, or (2) a superior right under some other public land law. If the former the conflicting claimant must make out a complete case in his own behalf as required by these regulations,¹⁹ on or before August 25, 1920.

¹⁹ The words "on or before August 25, 1920" were added by the amendment of March 25.

(b) Upon receipt of the application and showing of an adverse claimant the Commissioner of the General Land Office will consider same. If, in his judgment, the adverse claimant has failed to make a prima facie case showing that he is entitled to a lease or permit, as the case may be, for at least part of the land, his application will be rejected subject to appeal to the Secretary of the Interior. But if the adverse claimant makes out a prima facie case the Commissioner will take such course as may be advisable under the circumstances of each particular case to settle and adjust the rights of the respective parties, and may, if deemed necessary, order a formal hearing to settle disputed questions of fact. In the absence of appeal to the Secretary of the Interior from the final order or decision of the Commissioner, same shall be conclusive.

29. COMPROMISES UNDER SECTION 18A.—No special procedure will be outlined under this section. Any request for a compromise or settlement under this section which may be filed in the Land Department will be transmitted to the President with such report as may be deemed advisable under the circumstances of the particular case. In case the land is in a naval petroleum reserve the Navy Department will be consulted before making such report.

IV. Rights of Way for Pipe Lines.

30. Section 28 of the act grants to any applicant having the qualifications outlined in section 1 of these regulations, rights of way through public lands of the United States, including national forests, for pipe-line purposes for the transportation of oil or natural gas, on condition that the pipe lines for which rights of way are granted shall be operated and maintained as common carriers. The grant carries with it the right to the use of the ground actually occupied by the pipe line; and 25 feet on each side thereof for the purpose of construction, maintenance, and operation of the pipe line. Applicants for rights of way under this act will be governed by the regulations set forth in circular of June 6, 1908 (36 L. D. 567) in so far as applicable, appropriate changes being made in the forms therein prescribed to make them applicable to right-of-way cases arising under the

act of February 25, 1920 (Public No. 146), for pipe lines to be constructed, maintained, and operated as common carriers. Failure on the part of grantee to fulfil the conditions imposed by the act shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is situated.

V. Fees and Commissions.

31. Under the authority of section 38 of the Act, the following fees and commissions are prescribed for transactions under the act:

(a) For receiving and acting on each application for a permit, lease, or other right filed in the district land office in accordance with these regulations, there shall be paid a fee of \$2 for each 160 acres, or fraction thereof, in such application, but such fee in no case to be less than \$10, the same to be paid by the applicant and considered as earned when paid, and to be credited in equal parts on the compensation of the register and receiver within the limitations provided by law.

(b) A commission of 1 per cent on all moneys received in each receiver's office, to be equally divided between the register and receiver; such commission will not be collected from the applicant, lessee, or permittee in addition to the moneys otherwise provided to be paid.

It should be understood that the commission here provided for will not affect the disposition of the proceeds arising from operations under the Act as provided in section 35 thereof; also that such commission will be credited on compensation of registers and receivers only to the extent of the limitation provided by law for maximum compensation of such officers.

VI. Repealing and Saving Clauses.

32. Section 37 of the Act provides that hereafter the deposits of coal, phosphate, sodium, oil, oil shale, and gas, referred to and described therein, may be disposed of only in the manner provided in the Act "except as to valid claims existent at date of passage of this Act, and thereafter maintained in compliance

with the laws under which initiated, which claims may be perfected under such laws, including discovery."

Stated negatively, under this section of the Act, the following classes of oil or gas placer locations, so called, notwithstanding absence of fraud and full compliance with law in other respects, may not proceed to patent, viz:

(a) Any location made after withdrawal of the land.

(b) Any location made before withdrawal of the land but not perfected by discovery at date of withdrawal, which does not come within the protective proviso of section 2 of the Act of June 25, 1910 (36 Stat. 847); that is to say, any claimant who, at date of withdrawal, was not a bona fide occupant or claimant in diligent prosecution of work leading to discovery of oil or gas, and who has not continued in such diligent prosecution to discovery.

(c) Any location on lands not withdrawn, on which, at the date of the Act, the claimant had not made discovery or was not in diligent prosecution of work leading to discovery, and does not continue such work with diligence to discovery.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved: March 11, 1920.

ALEXANDER T. VOGELSANG,
Acting Secretary.

The circular of March 25, 1920 added a form of bond in this language:

The following form of bond is prescribed for use in compliance with the requirements of paragraph (i), section 4 of the regulations and paragraph 7 of the form of permit shown in section 6 of the regulations:

BOND OF OIL AND GAS PERMITTEE.

Act of February 25, 1920 (Public No. 146).

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.

U. S. Land Office.....

Serial Number.....

KNOW ALL MEN BY THESE PRESENTS, That we,
 of the county of, in the State of,
 as principal, and of the county of,
 in the State of, as surety, are held and firmly bound
 unto the United States of America in the sum of dol-
 lars, lawful money of the United States to be paid to the United
 States, for which payment, well and truly to be made, we bind
 ourselves, and each of us, and each of our heirs, executors, ad-
 ministrators or successors, and assigns, jointly and severally by
 these presents.

Signed with our hands and sealed with our seals this
 day of in the year of our Lord one thousand nine
 hundred and

The condition of the foregoing obligation is such that, where-
 as the said principal has made application under the act of
 February 25, 1920 (Public No. 146), for a permit to prospect
 for oil and gas for two years upon the following described lands

and whereas said permit, if granted, will be on condition that
 all operations shall be conducted in accordance with approved
 methods; that all proper precautions shall be exercised to pre-
 vent waste of oil or gas developed in the lands, or the entrance
 of water through wells drilled by, or on behalf of, the principal
 to the oil sands or oil-bearing strata to the destruction of the oil
 deposits.

Now therefore, if said principal shall promptly repair any
 damage that may result to the oil strata or deposits resulting

from improper methods of operation, or from failure to comply fully with the aforesaid conditions of said permit, then the above obligation is to be void and of no effect; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in presence of—

Name and address of witness:

.....

..... [L. S.]

Principal.

..... [L. S.]

Surety.

LAND OFFICE CONSTRUCTION OF THE LEASING ACT.

The act of February 25, 1920 (Public No. 146), was passed by Congress (referring to official correspondence) to cover broadly three classes of claims:

1. Wildcat territory, or unproven oil lands, as to which Congress provided for the issuance of a prospecting permit for not exceeding 2,560 acres in a single body, the prospector to be entitled to the exclusive possession of the land for a period of two years, on condition that he perform a reasonable amount of development work.

If he discovers oil or gas, he is entitled to a lease for one-fourth of the land at a nominal royalty, 5 per cent, and a preference right to lease the remainder of the land at a royalty to be fixed by the Secretary of the Interior or determined by competitive bidding.

Proven lands not covered by the claims hereinafter described are to be offered for lease to the general public in areas not exceeding 640 acres, on a royalty announced in advance of lease, to be awarded to the qualified bidder offering the highest bonus.

2. Claims initiated under the old mining laws prior to withdrawal but which, because of lack of diligence or continuous working, or because of the presence of dummy locators among

those originally filing the claim, could not be perfected under those laws.

This class of claims covers (a) those on which the locators or their successors in interest had drilled wells and discovered oil in paying quantities; (b) those claims located prior to withdrawal upon which the locators had complied with the requirements of the mining laws except as to discovery, and had expended at least \$250 in development work. To such claimants Congress accorded equitable relief, by providing that in the absence of fraud or knowledge of fraud by the party applying, a lease might be granted to the claims containing oil wells, on payment of one-eighth of the value of past production, and such royalty for future, not less than one-eighth, as might be determined.

That as to the second class of claims, where discovery had not been made, claimants should be entitled to a prospecting permit like that hereinbefore described, in order that they might continue their explorations and become entitled to leases upon discovery of oil or gas.

3. The concluding section of the act takes care of claims existing under the mining laws at date of their repeal, in so far as they apply to oil or gas lands, if such claims were valid, existent at date of the act of February 25, 1920, and thereafter maintained in compliance with law.

This provision of law is construed by the Department in harmony with the provisions of the act of June 25, 1910, *supra*,¹ and with the decisions of the court as to the rights of locators in possession of lands prior to discovery, namely, that in order to be entitled to hold and perfect such claims under the old mining laws, the applicant must show that his location was made prior to withdrawal, and that he at date of withdrawal was a *bona fide* occupant in diligent prosecution of work leading to the discovery of oil or gas, and has continued such diligent prosecution to discovery.

The act is not a perfect piece of legislation, but that is a failing common to most laws. We, however, must administer the act

¹ The Pickett Act, page 255.

as it is. Considering its history, I feel warranted in saying that Congress is not likely to change or amend it in the near future.

Land Service Bulletin July 1920.

The above is the construction of the Commissioner of the General Land Office on the oil sections of the Leasing Act printed in connection with correspondence given at length in the same bulletin.

The letters of the Commissioner supporting his position as to what is meant by valid discovery and valid location quote from *McLemore v. Express Co.* 158 Cal. 559, and *Cole v. Ralph*, 40 Sup. Ct. Rep. 321, cases heretofore cited in this book the quotation from the California case being:

"But where the location is incomplete, no question of assessment work is involved. What the attempting locator has is the right to continue in possession, undisturbed by any form of hostile or clandestine entry, while he is diligently prosecuting his work to a discovery. This diligent prosecution of the work of discovery does not mean the doing of assessment work. It does not mean any attempted holding, by cabin, lumber pile or unused derrick. It means the diligent, continuous prosecution of the work, with the expenditure of whatever money may be necessary to the end in view."

The same letters also argue section 37, the Saving clause of the Act.

These *ex parte* suggestions in advance of judicial rulings have value only as defining the position of the Department and can have no effect upon the final determination by the Courts.

The material point discussed in the Bulletin is whether under the terms of the Saving Section, Oil Placers which are regular in their notice, staking and record but have no discovery, are protected by merely doing the annual labor or whether their owners must be engaged in the diligent prosecution of sinking or other development and on this large and important class of claims it is not our province to anticipate the final interpretation although we are not in accord with the interpretation which the Department insists upon.

RULINGS ON THE OIL SECTIONS.

Conflicting Preference Rights Under Sections 19 and 20.

The preference right attaches to the claim first initiated and legally maintained. A locator of a mining claim who has complied with all the provisions of Section 19 of the act, will be entitled to a preference right over a homestead entryman whose entry was made after the location, the homesteader, however, being entitled to hold the surface right. If the homestead entry was made prior to the date of the placer location, the homestead claimant will have the superior right, except in the case of a stockraising homestead, wherein all minerals are reserved to the United States.

Permit for Unwithdrawn Land Covered by Agricultural Entry.

No permit will be granted until entryman has elected to take patent with reservation of oil and gas to the United States. If such a waiver is filed, entryman has preference right to permit or lease for lands covered by such entry.

Preference Rights under Section 20.

Preference rights under Section 20 will be granted in cases where entry was made prior to February 25, 1920, for unwithdrawn or unclassified lands, without any reservation of the minerals by the United States, and thereafter the claimant files a waiver of his right under the entry to the oil or gas. No preference right where land is covered by stock-raising entry, nor entry made subject to the Act of July 17, 1914, with oil and gas reservation.

Assignability of Permits.

Right to a permit is not assignable, but after permit is granted, it may be assigned upon consent of the Secretary of the Interior, first had and obtained.

Incontiguous Tracts.

Incontiguous tracts within a limited radius may be included in a permit where conditions are such that, because of prior disposals, a reasonable area of contiguous land can not be procured.

Operating Leases and Permits While Application Is Pending.

No objection will be raised to the operation of a producing well by a qualified claimant during the pendency of his application for lease, but he will be liable for whatever royalty is fixed by the lease for production during that period. An applicant for permit may do prospecting work at his own risk during the pendency of his application.

Pending Application for Permit, Land Designated as Oil Structure.

Where after application under Section 13, for a permit, and before permit is granted, the land is designated as within the structure of a producing oil or gas field, permit can not be allowed, and all rights under the application will fall.

Preference Right under Section 20.

A permit to prospect will be granted an applicant entitled thereto under Section 20 of the act, notwithstanding the land is part of a producing oil structure, where no oil has been discovered on the land applied for, provided that only one permit may be granted in the same structure to the same applicant.

Carey Act Selections as Affected by Leasing Law.

The lands in a Carey Act segregation come under the provisions of Sec. 2 of the oil and gas regulations, and permits and leases may be granted for such lands, subject to such stipulations and requirements as the Government may impose for the protection of the reclamation project, to the end that the best development of the lands, both for mineral and agricultural purposes, may be accomplished.

Neither the State nor its contractor would be entitled to any preference right under Section 20 of the act, and whether a Carey Act entryman would have such a right would depend upon the conditions affecting his entry being such as to bring him within the provisions of Section 20.

Drilling Contracts under a Permit.

If a contractor desires to be recognized in connection with a permit, he must file his contract for approval and be charged with the interest covered thereby. It is not necessary for him to do this and if he desires he may explore the land under contract with the permittee, and bring his contract to the attention of the Department only if and when he desires to be recognized as interested in such lease as may be applied for.

Office Practice—Conflicting Applications.

The issuance of a permit should be deferred, where all is regular and the applicant appears entitled to the permit, until the conflicting applicants have been notified that their applications have been rejected, because subsequent in time, subject to the right of appeal within fifteen days from receipt of notice.

Posting Notice by Agent.

Under the law, the action of an agent in posting notice is the action of his principal, but the application for permit may not be executed by agent.

Permits of Corporations as Affected by Stockholder's Permits.

The maximum number of permits to a corporation is not limited by permits of individual stockholders, but a corporation may have an interest in not more than three permits in same state, directly or indirectly. Individual may hold direct interest in not more than three permits and his total interests as permittee and stockholder may not exceed an aggregate of 7,680 acres in the same state.

Preference Right Permits to Qualified Assignees.

Section 19 of the act of February 25, 1920, is construed to permit qualified assignees since October 1, 1919, to secure preference right permits, but no such transferee will be permitted to hold permits exceeding 2560 acres for such lands in the same geologic structure, nor more than three times that area in the same state.

Permits in Alaska.

The same rule applies in Alaska as in the States; that is not more than one permit in same structure.

RULINGS ON CONFLICTS WITH AGRICULTURAL ENTRIES.

1. If the land was withdrawn or classified *at the time of entry* so that the entry was made with a reservation of the mineral, there is no preference right; conversely, to entitle the homesteader to a preference, the entry must have been properly made *without a reservation* of the mineral.

2. There can be no preference right on an entry *allowed* after February 25, 1920. (Regulations, sec. 12).

3. There can be *no preference right* on a stock-raising entry under the Act of December 29, 1916, at all, for under that Act all entries are made with a reservation of the mineral.

4. If the homestead entry was made *without* reservation of the mineral, but *after* the lands were of known mineral character, and merely for the purpose of acquiring mineral rights, there is no preference right to a permit, because (a) such an entry should have been made with a reservation of the mineral, and the requisite non-mineral affidavit on which the entry was procured was fraudulent, and (b) the entry is not "of lands bona fide entered as agricultural."

5. But where one has an *original* entry under the 160 or 320-acre law and an additional under the stock-raising (640-acre) law, the entryman will have the same rights under the original as he would have had had he not made the additional.

6. Where one has an entry without a reservation of the mineral, nobody (not even the entryman himself) may acquire

a permit or lease for the mineral so long as the entry stands in that shape, for the entry segregates both the surface and mineral until such time as the reservation is created.

7. *But*, if the entryman in the case last above mentioned, files a waiver of the mineral rights in the land, then he may exercise his preference right, if he has any, and if not, others may file application for a mineral permit or lease.

8. The "reservation" of the mineral above referred to, is pursuant to Sec. 2 of the Act of July 17, 1914 (38 Stat., 509), which provides that the mineral occupant shall pay any damage caused to the agricultural claimant.

9. Where a patented entry or one on which final certificate has issued, has been sold or transferred, the transferee would have the same rights as the entryman, provided he acquired the land *before* January 1, 1918, but if he acquired it after that date, there would be no preference right to anybody.

10. A patentee, or entryman with final certificate, with a reservation of the mineral to the Government, who has a preference right, cannot withhold the land from development indefinitely. Sec. 12 of the regulations provides that if anybody else applies for a permit on the land, the preference right man shall be given notice and allowed thirty (30) days within which to exercise his preference, and apply for a permit himself; otherwise he will be out.

11. The preference right claimant must be qualified to take a permit under the law the same as anybody else; for instance, an alien transferee of patented land could not get a permit or lease; one who has already received the limit of permits allowed, could not get a permit.

12. The matter of whether the agricultural entry on which a preference right to a permit is predicated, is within or without a known producing structure cuts no figure in connection with the preference rights here under consideration provided, that only one permit may be granted in the same structure.

13. An oil placer location perfected by discovery segregates the land *from any further entry* so long as the claim is maintained, but in case of attempted homestead, the mineral claimant must file contest to protect his interest, as the Land Department

has no record of his claim in the absence of an application for patent.

14. An oil placer location, perfected by discovery, laid over land embraced in a prior, valid, subsisting homestead entry, is ineffective so long as the homestead stands.¹ (Prior to the Act of July 17, 1914, the mineral claimant could contest the homestead and cause its cancellation; under that Act the homesteader may retain surface rights and the mineral is automatically withdrawn; and under the Leasing Act the homesteader *might* have a preference right to a permit for the mineral.)

15. But a mere "paper" oil placer location (that is one without discovery) will not prevent a homestead entry of the land.

16. Where the claimant of a "paper" location is on the ground in diligent prosecution of work leading to discovery at the time the land is homesteaded, he may by contest defeat the homestead entry.

17. In case of conflict between a preference right claimant under Secs. 18 and 19, and one under Sec. 20, the one would prevail whose rights were prior in their lawful inception.

18. The allowance, (after February 25, 1920) of a homestead entry on land covered by valid rights to relief permits or leases under Secs. 18 or 19, is entirely within the discretion of the Secretary of the Interior.

19. Where a homestead entry (not under the Grazing Act) is made without a reservation of the oil to the Government and the land is withdrawn or classified as oil land before completed final proof is submitted, the entryman must take patent with a reservation of the oil, *unless* he can procure a reclassification of the land by the Department or a removal of the withdrawal, or *unless* he can show at a hearing (the burden of proof being on him) that the land was not of a known mineral character at date of final proof.

20. But where, in the case last stated, the withdrawal or classification as mineral was not made until *after* final proof was

Note 1. A stock-raising homestead is an exception to this rule, for all minerals are reserved therefrom, and the oil deposits could have been located under the placer law up to Feb. 25, 1920.

submitted, the entryman will be entitled to a patent without a reservation, *unless the Government* can show (the burden of proof being on the Government), at a hearing if necessary, that the land was of *known mineral character* at the date of final proof. If the Government can show this, the result will be the same regardless of whether there has been a withdrawal or classification.

The same general principles above stated apply to other kinds of non-mineral entries, except land acquired under railroad grants.

Land Service Bulletin, July, 1920.

The following are some of the more recent Rulings of the Department in relation to oil and gas permits and leases, which have been made since the *Land Service Bulletin* above cited:—

Discovery on Adjoining Claims.

In case of two claims that adjoin, it is necessary to have discovery on each claim, to secure lease for both under Section 18. If the discovery is only on one claim the lease must be confined to the limits of the claim containing the discovery.

Right of Assignees to Lease.

The grantee of good faith locators may transfer his interest to contractors, assignees, or lessees who were in possession prior to July 1, 1919, and each of such owners may then apply for a lease of such portion of the claim as may be agreed upon among those entitled to the claim as a whole. This is contingent upon the condition that grantee of locators has not been holding more than the maximum allowed under Section 18 of the leasing act.

Party in Interest Must File Application.

The oil and gas leasing bill provides that permits may be issued to a citizen of the United States, and association of such citizens, a corporation organized under the laws of the United States or of any State or Territory thereof or a municipality.

It follows from this that no one but a citizen can obtain

any rights under the provisions of said act. This office has held that an agent or attorney-in-fact may locate a claim but that the party in whose interest the claim is located must file the application for a permit and at that time show his qualifications. The citizenship of the agent is not material.

Assignee of Claim Located Before October 1, 1919.

An application for oil permit or lease under section 19 may be made by an assignee who acquired title after October 1, 1919, to a claim located before that date, provided such assignee may not acquire permits to more than 2560 acres in the same structure or three times that area in the same state.

CIRCULAR NO. 696.

PHOSPHATE LAWS AND REGULATIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 22, 1920.

Registers and Receivers,

United States Land Offices.

SIRS: Sections 9 to 12, inclusive, of the act of Congress approved February 25, 1920 (Public No. 146), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," authorize the Secretary of the Interior to lease lands belonging to the United States containing deposits of phosphates, and accordingly the following rules and regulations are prescribed for the administration of the provisions of said sections of the act:

1. Lands to Which Applicable.

The act applies to the lands belonging to the United States containing deposits of phosphates, including lands in national forests and including the phosphate deposits reserved under laws

authorizing entries and patents with reservation to the United States of such deposits; also to phosphate lands in ceded or restored Indian reservations the proceeds from the disposition of which are the property of the United States. The act is not applicable to lands in the Appalachian Forest Reserve (under act of March 1, 1911, 36 Stats., 961), lands in national parks, lands withdrawn for military or naval purposes, or lands in ceded or restored Indian reservations the proceeds from the disposition of which belong to the Indians.

All leases of phosphate deposits within the limits of national forests or other reservations or withdrawals to which the act is applicable shall be subject to and contain such conditions, stipulations, and reservations as the Secretary of the Interior shall deem necessary for the protection of the forests, reservations or withdrawals, and the uses and purposes for which created.

2. Leasing Area.

Leases may embrace not exceeding 2,560 acres of lands or deposits, in compact form, the length of which shall not exceed two and one-half times its width. If surveyed, the lands must be taken by legal subdivisions of such survey; and if unsurveyed, to be surveyed by the Government at the expense of the applicant prior to the issuance of lease. Such surveys will be made under the regulations governing public land surveys, prior to the execution of which applicants will be required to deposit with the United States surveyor general the estimated expense thereof.

3. Qualification of Applicants.

Leases may be issued to (a) citizens of the United States, (b) associations of citizens, and (c) to corporations organized under the laws of the United States or of any State or Territory thereof.

4. Minimum Development.

An actual bona fide expenditure for mine operations, development or improvement purposes of the amount determined by the Secretary of the Interior will be a condition in each lease as

the minimum basis on which each lease will be granted, with the requirement that not less than one-third of such proposed investment shall be expended in development of the mine during the first year, and a like amount each year for the two succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years. A bond executed by the lessee with approved corporate surety will be required to be furnished in the sum of \$10,000, conditioned upon the expenditure of the specified amount of investment. After said investment has been made a similar bond in the sum of \$5,000, conditioned upon compliance with the terms of the lease will be required.

5. Minimum Production.

Under the provision of the act requiring leases to be for indeterminate periods upon condition of a minimum annual production after the first three years, except where interrupted by strikes, the elements or casualties not attributable to the lessee, each lease will contain appropriate conditions fixing such minimum production of phosphates or phosphate rock from the land.

6. Application for Lease.

Application for a lease must be under oath and filed in the proper district land office, addressed to the Commissioner of the General Land Office. No specific form is required and no blanks will be furnished, but the application should cover the following points:

(a) Applicant's name and address.

(b) Citizenship of applicant, whether native born or naturalized; and if naturalized, furnish a certificate thereof in the form provided for use in public land matters, if one is not already on file in the Land Department; if an association, citizenship of each member must be shown; if a corporation, furnish a certified copy of its articles of incorporation and a showing as to the residence and citizenship of its stockholders.

(c) A statement that the applicant holds no lease of phosphate

lands under said act within the State in which the land is situated; nor, as a member of an association or stockholder in a corporation, holds any interest or interests in any lease or leases of phosphate lands under said act, which, together with the lands applied for, exceed in the aggregate 2,560 acres.

(d) Description of the land, whether vacant or unclaimed; if surveyed, by legal subdivisions; if unsurveyed, by metes and bounds, and where possible by the approximate subdivisions the land will be when surveyed. If the land is unsurveyed, a survey thereof at the expense of the applicant must be provided for prior to the execution of a lease thereof, as provided in section 10 of the act.

(e) Description of the phosphate deposits in the land, giving nature and extent thereof; the proposed method of mining and reduction of same; and proposed investment in mining operations thereon and reduction facilities therefor if a lease be granted the applicant.

7. Action by local office.

Registers and receivers will assign current serial numbers to such applications when filed, promptly note their records, and require a notice of the application to be published at the expense of the applicant for a period of 30 days in a newspaper of general circulation in the county in which the deposits are situated, advising all adverse claimants or protestants that if they desire to object or protect any interest as against the applicant, prompt action to that end should be taken, and upon proof of such publication, transmit the applications to the General Land Office with report of record status of the land described therein.

After receipt of such an application, no filing for any of the land described therein will be accepted until so directed, unless the application be rejected.

8. Action on Application.

Upon consideration of the application in the General Land Office, if the tracts of land or deposits are found subject to lease

and the application is otherwise satisfactory, a lease substantially in the form herewith will be submitted to the applicant for his execution.

9. Action by Successful Applicant.

The successful applicant will be allowed 30 days after receipt of the lease for execution within which to (a) file in the district office the lease duly executed by him in triplicate and in the form herein prescribed; (b) file evidence of citizenship and qualifications as required by paragraph 6 hereof, if not theretofore filed by him; (c) file the bond required by paragraph 2 b of the lease, or United States bonds in lieu thereof under the act of February 24, 1919 (40 Stat., 1148); and (d) pay the annual rental for the first year of the lease.

10. Action by Local Office.

At the end of the 30 days allowed the successful applicant, or sooner if the foregoing be complied with by him, the local officers will forward by special letter all papers with full report of action taken.

11. Form of Lease.

Leases hereunder will be in substantially the following form:

Land Office at
Serial No.

The United States of America, Department of the Interior.

MINING LEASE OF PHOSPHATE LANDS UNDER ACT OF FEBRUARY 25, 1920.

Date. Parties.

This indenture of lease, entered into, in triplicate, this day of, A. D. 19—, by and between the United States of America, acting in this behalf by, Secretary of the Interior, party of the first part, hereinafter called the

lessor, and of, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress, approved February 25, 1920 (41 Stat., —), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," hereinafter called the "act."

Description of Land. Mining and Surface Rights.

WITNESSETH:

That the lessor, in consideration of the rents and royalties to be paid and the covenants to be observed as hereinafter set forth, does hereby grant and lease to the lessee the exclusive right and privilege to mine and dispose of all the phosphate and phosphate rock in, upon, or under the following described tracts of land, situated in the State of, to wit:

..... containing acres, more or less, together with the right to construct all such works, buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the phosphates for market, the manufacture of products thereof, the housing and welfare of employees, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges granted.

Rights Reserved by Lessor. Easements.

SECTION 1. That the lessor expressly reserves:

(1 a) The right to permit for joint or several use such easements or rights of way, including easements in tunnels upon, through, or in the land leased, occupied, or used as may be necessary or appropriate to the working of the same or other lands containing the deposits described in said act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

Disposition of Surface.

(1 b) The right to lease, sell, or otherwise dispose of the surface of said lands or any part thereof under existing law or laws hereafter enacted, in so far as said surface is not necessary for the use of the lessee in the mining and removal of the phosphates therein, and to lease other mineral deposits in the lands, under the provisions of said act.

Monopoly and fair prices.

(1 c) Full power and authority to carry out and enforce all the provisions of section 30 of said act to insure the sale of the production of said leased lands to the United States and to the public at reasonable prices, to prevent monopoly, and to safeguard the public welfare.

Lessee's Covenants.

SEC. 2. The lessee in consideration of the lease of the rights and privileges aforesaid hereby covenants and agrees as follows:

Investment.

(2 a) To invest in actual mining operations, development or improvements upon the land leased, or for the benefit thereof, the sum of dollars, of which sum not less than one-third shall be so expended during the first year succeeding the execution of this instrument and a like sum each of the two succeeding years, unless sooner expended; and submit annually, at the expiration of each year for the said period, an itemized statement of the amount and character of said expenditure during such year.

Bond.

(2 b) To furnish a bond in the sum of \$10,000, conditioned upon the expenditure of the amount specified herein (2 a), and after said investment has been made, a similar bond in the sum of \$5,000, conditioned upon compliance with the terms and provisions of this lease.

Annual Rental.

(2 c) To pay as an annual rental for each acre or part thereof covered by this lease the sum of 25 cents per acre for the first year, payment of which amount is hereby acknowledged, the sum of 50 cents per acre per year for the second, third, fourth, and fifth years, and \$1 per acre for the sixth and each succeeding year during the life of this lease, all such annual payments of rental to be made to the receiver of the United States land office of the district in which said land is situated, on the anniversary of the date hereof, and to be credited on the first royalties to become due hereunder during the year for which said rental was paid.

Royalty.

(2 d) To pay to such receiver a royalty of per cent (not less than 2 per cent) of the gross value of the output of phosphates or phosphate rock at the mine during the first 20 years succeeding the execution of this lease. (Special provisions suited to operations under the lease may be here inserted if found necessary.) Royalties shall be payable quarterly within 30 days from the expiration of the quarter in which the phosphates are mined.

Record of Phosphates Mined.

(2 e) To determine accurately the weight or quantity of all phosphates or phosphate rock mined from the leased premises, and to accurately enter the weight or quantity thereof in due form in books to be kept and preserved by the lessee for such purpose.

Quarterly Reports.

(2 f) To furnish quarterly, within 30 days after the expiration of the quarter, a written report covering such quarter, certified under oath by the superintendent of the mine, or by such other agent having personal knowledge of the facts as may be designated by the lessee for such purpose, showing the amount of phosphates or phosphate rock mined during the quarter, the

character and quality thereof, and amount of its products and by-products disposed of and price received therefor, and amount of phosphates or phosphate rock and its products in storage or held for sale.

Annual Reports.

(2 g) Also to furnish in such manner and form as may be prescribed by the lessor, at the end of each year, beginning on the first anniversary of the date of the lease, and at such other times as the lessor may require, a plat showing all development work and improvements on the leased lands, and other related information, with a report under oath as to all buildings, structures, or other works placed in or upon said leased lands, accompanied by a report in detail as to the stockholders, investment, depreciation, and cost of operation, together with a statement as to the amount of phosphate or phosphate rock produced and sold, and the amount received therefor, by operations hereunder.

Mine Maps.

(2 h) To keep at the mine office clear, accurate, and detailed maps, on a scale not more than 200 feet to the inch, in the form of horizontal projections on tracing cloth, of the workings in each phosphate bed in each separate mine on the leased lands, a separate map to be made for each such bed, and for the surface immediately over the underground workings, and to be so arranged with reference to a public land corner that the maps can be readily superimposed.

Progress Maps.

Blue prints or reproductions in duplicate of the maps required as aforesaid shall be furnished the lessor when made, and supplemental prints or reproductions in duplicate furnished on or before the first day of each succeeding year, showing the extensions, additions, and changes since the last map or supplement was submitted. All mine progress maps kept by the lessee shall at all times be subject to examination by lessor.

Minimum Production.

(2 i) That, beginning with the fourth year of the lease, except when such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, the lessee shall mine each year and pay a royalty thereon, not less than tons of phosphate rock from the leased premises, unless operations are suspended as provided in section 11 of the act.

Assignment of Lease.

(2 j) That the lessee shall not assign this lease or any interest therein, nor sublet any portion of the leased premises without the written consent of the lessor being first had and obtained.

Readjustment of Terms.

SEC. 3. It is mutually understood and agreed that the lessor shall have the right to readjust and fix the royalties payable hereunder and other terms and conditions including amount of minimum annual production, at the end of 20 years from the date hereof, and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period, but in case the lessee be dissatisfied with the rate of royalty or other terms and conditions so fixed, he may terminate this lease in the manner and under the conditions provided in sections 6 (b) and 6 (c) hereof.

Provisions Controlled By State Laws.

SEC. 4. This lease is made subject to the following provisions, which the lessee accepts and covenants faithfully to perform and observe, unless the laws of the State where the leased land or deposits are situated otherwise provides, in which case such State laws control:

Operating Regulations.

(4 a) The lessee shall carry out and observe regulations prescribed by the Secretary of the Interior and in force at the date hereof relative to (1) reasonable diligence, skill, and care in the operation of said property in accordance with approved

methods and practices, (2) the prevention of undue waste, and (3) the safety and welfare of miners.

Payment of Wages. Freedom of Purchase. Eight-hour work-day.

(4 b) And also shall pay all miners and other employees, both above and below ground, at least twice each month in lawful money of the United States, and shall permit such miners and other employees full and complete freedom of purchase, but with a view to increasing safety this provision shall not apply to the purchase of explosives, detonators, or fuses; and shall not require or permit miners or other employees, except in case of emergency, to work underground for more than eight hours in any one workday, and shall not employ any boy under the age of 16 years or any girl or woman without regard to age in any mine below the surface.

Inspection.

SEC. 5. And the lessee also expressly agrees that all mining and related operations shall be subject to the inspection of authorized representatives of the lessor, and that such representatives may at all times enter into and upon the leased lands and survey and examine same and all surface and underground improvements, works, machinery, equipment, and operations.

Examination of Books and Records.

(5 a) And also shall permit the lessor to examine all books and records pertaining to operations under this lease and to make copies of and extracts from any or all of same, if desired.

Operations on Adjoining Lands.

(5 b) And also shall permit the lessor, or its lessees or transferees, with the approval of the lessor, to make and use upon or under the leased lands any workings necessary for freeing any other mine from water or gas, or extinguishing fires, causing as little damage or interference as possible to or with the mine or mining operations of the lessee hereunder; *Provided*, That any such use by a transferee or another lessee shall be conditioned

upon the payment to the lessee hereunder of the amount of actual damages sustained thereby and adequate compensation for such use.

Result of Forfeiture.

(5 c) And also shall, at the termination of this lease, as the result of forfeiture thereof, pursuant to paragraph (6 d), deliver up to the lessor the lands covered thereby, including all fixtures, machinery, improvements, and appurtenances, other than strictly personal property, situate on any of said lands, in good order and condition, so as to permit of immediate continued operation to the full extent and capacity of the leased premises.

Surrender or Forfeiture of Lease. Improvements.

SEC. 6. It is further mutually understood and agreed as follows:

(6 a) That the lessor may in writing waive any breach of the covenants and conditions contained herein except such as are required by the act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach; nor shall the waiver of a particular cause of forfeiture prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Surrender of Lease.

(6 b) The lessee may, on consent of the Secretary of the Interior first had and obtained, surrender and terminate this lease upon payment of all rents, royalties, and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary of the Interior that the public interest will not be impaired; and the lessee may with like consent surrender any legal subdivision of the area included within the lease; but in no case shall such termination be effective until the lessee shall have made provision for the

preservation of any mines or productive works or permanent improvements on the lands covered hereby.

Privilege of Purchasing Equipment.

(6 c) That on the termination of this lease, pursuant to the last preceding paragraph, the lessor, his agent, licensee, or lessee shall have the exclusive right, at the lessor's election, to purchase at any time within six months, at the appraised value thereof, all buildings, machinery, equipment, and tools, placed by the lessee in or on the land leased hereunder, save and except all underground timbering, and such other supports and structures as are necessary for the preservation of the mine, which shall be and remain a part of the realty without further consideration or compensation; that the purchase price to be paid for said buildings, machinery, equipment, and tools to be purchased as aforesaid, shall be fixed by appraisal of three disinterested and competent persons (one to be designated by each party hereto and the third by the two so designated), the valuation of the three or a majority of them to be conclusive; that pending such election to purchase within said period of six months none of said buildings or other property shall be removed from their normal position; that if such valuation be not requested, or the lessor shall affirmatively elect not to purchase within said period of six months, the lessee shall have the privilege of removing said buildings and other property, except said timbering and other supports and structures, as are necessary for the preservation of the mine, as aforesaid.

Forfeiture.

(6 d) If the lessee shall fail to comply with the provision of the act or make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or in the general regulations promulgated and in force at date hereof, the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 31 of the act, but this provision shall not be construed as depriving the lessor of any legal or equitable remedy which the lessor might otherwise have.

12. Use Permits for Additional Lands.

Under section 12 of the act a lessee may be granted a right to use the surface of not exceeding 40 acres of unappropriated and unentered land as may be necessary for the proper prospecting for or development, extraction, treatment, or removal of the phosphate deposits in the leased lands.

Applications for permits for such additional tracts shall be filed in the district office having jurisdiction over the lands and should identify the lease by the serial number under which issued, and be filed under the same number. Such applications must be under oath and set forth the specific reasons why the additional tract is necessary to the lessee for the use named, described the land desired by legal subdivision if surveyed, and if unsurveyed, by the approximate description it will be when surveyed, and also set forth the reasons why the land is desirable and adapted to the uses named, either in point of location, topography, or otherwise, and that it is unoccupied and unappropriated.

FORM OF USE PERMIT UNDER SECTION 12.

Land Office at

Serial No.

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR.

Use Permit under Section 12, Act of February 25, 1920.

Know all men by these presents, that the Secretary of the Interior, under and by virtue of the act of Congress approved February 25, 1920, entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," hereby grants to, holder of lease bearing serial No., the exclusive right, so long as needed, used, and occupied during the life of the aforesaid lease, the use of the surface of the following described tract of land, to wit,
.....
for the proper prospecting for or development, extraction, treat-

ment, or removal of the phosphate deposits covered by the aforesaid lease, all rights hereunder to cease and terminate upon the termination of the aforesaid lease.

Dated this day of, 19...

.....
Secretary of the Interior.

13. Repealing and Saving Clause.

Section 37 of the act provides that hereafter the deposits of coal, phosphate, sodium, oil, oil shale, and gas referred to and described in the act may be disposed of only in the manner provided by the act, "except as to valid claims existent at date of passage of this act, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under said laws, including discovery." As to phosphate claims, those claims initiated under the pre-existing law may go to patent which, at the date of the act, were valid mining locations, duly made and maintained as such on lands subject to such location at the date initiated.

14. Fees and Commissions.

(a) For receiving and acting upon each application for lease filed in the district land office in accordance with these regulations, there shall be paid by the applicant a fee of \$2 for every 160 acres or fraction thereof in the application, such fee in no case to be less than \$10, the same to be considered as earned when paid, and to be credited in equal parts to the compensation of the register and receiver within the limitations provided by law.

(b) Registers and receivers shall be entitled to a commission of 1 per cent of all moneys received in each register's office, to be equally divided between the register and receiver. Such commission will not be collected from the applicant or lessee in addition to the moneys otherwise provided to be paid.

It should be understood that the commissions herein provided for will not affect the disposition of the proceeds arising from operations under the act, as provided in section 35 thereof; also

that such commissions will be credited on compensation of registers and receivers only to the extent of the limitation provided by law for maximum compensation of such officers.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved May 22, 1920.

JOHN BARTON PAYNE,
Secretary of the Interior.

The Phosphate sections of the Act, 9-12, call for leases but not for permits. The leases are to be granted upon competitive bidding after advertisement or by any other method adopted by the Land Office by general regulation, sec. 9.

There are no limitations, either on the rental or on the royalty, which assumes that the lessee has not acquired any rights in the way of pre-emption until he obtains his lease.

A permittee, where any kind of mineral permit is allowed, is supposed to be a prospector who, when successful under the permit, becomes entitled to a lease, but if there is no limit to the royalty in such promised lease, there is no reward to the prospector at all. If the phosphates had been located as placers, as they might have been under the law, such locations may be advanced to patent. If there be a location, valid, except as to discovery, it may be advanced to discovery and, after discovery to patent, under Section 37; but if there be no such inchoate right, a phosphate seeker must apply for Lease under the 1920 Act.

Rule 4 requiring an approved bond in \$10,000 is an almost prohibitive requirement. These excessive demands do not absolutely deprive the prospector of all the benefit of his discovery but they do compel him to divide with the party furnishing the security. We know of no reasons which justify the imposition of any such condition.

FORM OF APPLICATION FOR LEASE.

To the Honorable Commissioner of the General Land Office:

Your petitioner, George C. Hackstaff, respectfully represents:

1. That his residence is in the City and County of Denver, State of Colorado, and that his address is number 63 Arapahoe Block, in said City of Denver.

2. That he is a native-born citizen of the United States.

3. The applicant holds no lease of phosphate lands within the State of Oklahoma in which the land is situated, nor as a member of an association or a stockholder in a corporation does he hold any interest or interests in any lease or leases for phosphate lands under the Leasing Act of 1920 exceeding, together with the land applied for, the aggregate of 2560 acres.

4. The land applied for is vacant and unclaimed and is unsurveyed. It contains 320 acres, has been plainly marked and staked upon the ground and would probably fall within township 1 South, Range West of the P. M. in Day County, State of Oklahoma.

5. From the northeast corner of the claim, the north end of an island in the Canadian River bears north 45° east, distant about one mile. A large stone building, the property of and owned by Paul M. Segal, bears due east from said northeast corner about one mile distant and a large stake sunk two feet in the ground, six feet high and six inches square, scribed with the initials of the claimant, bears south 10° east, 100 feet from the said northeast corner.

6. The applicant is prepared to pay the expenses of survey when fixed by the Department or the Surveyor General as required by said Act.

7. The phosphate deposits in the land show surface indications of phosphate rock carrying 50 per cent. of Calcium Phosphate over an area of ten acres which has been exposed by two pits, each six feet deep. The proposed method of mining is by open face surface excavations and the proposed reduction of the ore is by treatment with sulphuric acid to produce the soluble phosphates used in the composition of commercial fertilizers.

8. The proposed investment is by building a plant at an estimated cost of \$5,000 under written contract with responsible parties, a copy of which will be furnished if requested by the Department (or a copy may be inclosed as an exhibit).

9. The tract upon which lease is prayed for is in compact form and its length does not exceed two and one-half times its width, the tract running due north and south 5280 feet and due east and west 2660 feet.

Wherefore your petitioner prays that the amount of royalty and the acreage rental be specified as required by section 11 of said Act and that a lease be granted to your petitioner under and in conformity to the regulations of the Department in such case made and provided.

George C. Hackstaff.

Verify as on page 313.

Publishing Notice of Application.

Rule 7, above printed, says that upon filing petition such as above a notice will then be published at the applicant's expense requiring adverse claimants or protestants, if any, to appear. After proof of publication, the papers are to be forwarded to the General Land Office for action.

The form of notice on page 404 for publication used in case of a Sodium lease, should, with obvious changes fulfill the requirements concerning this notice.

As the applicant has no pre-emption rights and the rules do not require competitive bidding, it would seem that rule 7 is published under the phrase "such other methods as the Secretary of the Interior may by general regulation adopt."

Section 11 requires that the royalties be fixed in advance of offering the same which must certainly mean before the notice is published. The prayer in the above form, it will be noted, is that such royalties be fixed. The rules evidently treat the petitioner as having pre-emption rights as they do not require competitive bidding but do require a protest or adverse claim. The disagreement between the rule and the section cited is apparent but doubtless the local land office would hold the application until the rents and royalties were fixed or further regulations may make the practice more clear.

CIRCULAR NO. 699.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 28, 1920.

SODIUM REGULATIONS.**Permits Authorizing Exploration of Public Lands for Sodium.**

Registers and receivers, United States land offices:

SIRS: The Act of Congress approved February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (Public No. 146), authorizes the Secretary of the Interior, under such rules and regulations as he may prescribe, to issue prospecting permits, for a period not to exceed two years, for the exploration of the land described therein for sodium in any of the forms named in said act, and under authority thereof the following rules and regulations will govern the issuance of such permits:

1. Qualifications of Applicants.

Permits may be issued to (a) citizens of the United States, (b) an association of such citizens, (c) or a corporation organized under the laws of any State or Territory thereof.

2. Lands to Which Applicable.

The permit thus issued may include not more than 2,560 acres of public lands of the United States in reasonably compact form, by legal subdivisions if surveyed; if unsurveyed, by metes and bounds description.

3. Rights under Permit.

The permit will confer upon the recipient the exclusive right to prospect for chlorides, sulphates, borates, silicates, or nitrates of sodium, dissolved in and soluble in water, and accumulated by concentration, on the lands embraced therein. In the exercise

of this right the permittee shall be authorized to remove from the premises only such material as may be necessary to experimental work and the demonstration of the existence of such deposits or any of them in commercial quantities.

4. Reward for Discovery.

If the permittee within the two years specified shall discover valuable deposits of one or more of the forms of sodium as described in said act within the area covered by his permit, such discovery shall entitle him to a lease of one-half the land embraced in the permit, to be taken in compact form. The discovery of a valuable deposit of sodium under this permit shall be construed as the discovery of a deposit which yields commercial sodium in commercial quantities.

The remainder of the land embraced in such permit, if containing deposits of sodium, will thereafter become subject to lease, under such regulations as may be found requisite in dealing with the land containing said deposit, the permittee having a preference right to lease such remainder.

5. Camp Sites.

In addition to land embraced in the permit, the Secretary may, in his discretion, issue to the permittee, during the life of the permit, the exclusive right to use a tract of unoccupied, nonmineral public land, not exceeding 40 acres in area, for purposes connected with and necessary to the development of the deposits covered by the permit, subject to the payment of an annual rental of not less than 25 cents per acre.

6. Form and Contents of Application.

Applications for permits should be filed in the proper district land office, addressed to the Commissioner of the General Land Office, and after due notation promptly forwarded for his consideration. No specific form of application is required, but it should cover, in substance, the following points, namely:

(a) Applicant's name and address.

(b) Proof of citizenship of applicant; by affidavit of such

fact, if native born; or, if naturalized, by the certificate thereof or affidavit as to time and place when issued; if a corporation, by certified copy of the articles thereof.

(c) Description of land for which the permit is desired, by legal subdivisions, if surveyed, and by metes and bounds, if unsurveyed, in which latter case, if deemed necessary, a survey sufficient more fully to identify and segregate the land may be required before the permit is granted; also a statement whether the land is vacant and unclaimed.

(d) Reasons why the land is believed to offer a favorable field for prospecting.

(e) Proposed method of conducting exploratory operations, amount of capital available for such operations, and the diligence with which such explorations will be prosecuted.

(f) Statement of the applicant's experience in operations of this nature, together with references as to his character, reputation, and business standing.

7. On the receipt of the application, if found in compliance with the terms of the act, a permit will issue and the district land officers be promptly notified thereof.

8. Form of Permit.

The form of permit issued under this act will be in substance as follows:

THE UNITED STATES OF AMERICA,
Department of the Interior.

SODIUM PROSPECTING PERMIT.

Know all men by these presents, that the Secretary of the Interior, under and by virtue of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, has granted and does hereby grant a permit to
..... of the exclusive right for a period of two years from date hereof to prospect the following described lands

..... for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium, dissolved in and soluble in water, and accumulated by concentration, but for no other purpose, upon the express conditions as follows, to wit:

1. To begin the prospecting for said minerals within ninety days from date hereof and to diligently prosecute the exploration and experimental work during the period of such permit, in the manner and extent as follows, to wit:

.....
2. To remove from said premises only such material as may be necessary to experimental work and the demonstration of the existence of such deposits in commercial quantities.

3. To afford all facility for inspection of such exploratory work on behalf of the Secretary of the Interior, and to report fully when required all matters pertaining to the character, progress, and results of such exploratory work, and to that end to keep and maintain such accounts, logs, or other records, as the Secretary of the Interior may require.

4. Not to assign or transfer the permit granted hereby without the express consent in writing of the Secretary of the Interior.

Expressly reserving to the Secretary of the Interior the right to permit for joint or several use such easements or right of way upon, through or in the lands covered hereby, as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in said act; *and further reserving* the right and authority to cancel this instrument for failure of the permittee or licensee to exercise due diligence in the execution of the prospecting work in accordance with the terms hereof.

Valid existing rights, acquired prior hereto, on the lands described herein, will not be affected hereby.

In witness whereof I have affixed my signature hereto and the seal of the Department this day of, 19...

.....
Secretary of the Interior.

II.

REGULATIONS PERTAINING TO LEASES FOR LANDS CONTAINING SODIUM.

The Act of February 25, 1920 (Public No. 146), in section 24, authorizes the Secretary of the Interior, under such general regulations as he may adopt, to lease, for the production of the sodium and other mineral deposits contained therein, public lands, except those in San Bernardino County, California:

A. Known to contain sodium in commercial quantity and character and found in some or any of the forms described in said act.

B. Embraced in any permit, under which the existence of such deposits has been demonstrated, but not included in the lease awarded to the permittee, and by virtue of such authority the following regulations are hereby prescribed:

1. Qualifications of Applicants.

Applications for leases in the form as herein provided may be filed in the proper district land office, addressed to the Commissioner of the General Land Office for any land in classes A and B, by citizens of the United States, an association of such citizens or corporations organized under the laws of any State or Territory thereof; the qualifications of the applicant in this respect to be fully covered by the application.

2. Area and Description.

Leases are authorized by the terms of the act for an area not exceeding 2,560 acres, but will be granted only for such area as may be shown to the satisfaction of the Secretary of the Interior to contain deposits of sodium, in such form and quantities as to constitute a commercial value, and will be limited to lands reasonably compact in form and described by legal subdivisions of the public land surveys, if surveyed, or if unsurveyed, by the approximate description they will bear when surveyed; the survey in the latter case to be made at the expense of the applicant if the application for lease is otherwise found satisfactory, the

descriptions of the land in the lease when granted to conform to the official survey.

3. Action by Register and Receiver.

Applications when filed with the district land office will be given the current serial number, promptly noted of record and transmitted to the Commissioner of the General Land Office, accompanied by a statement as to the status of the lands embraced therein. After the receipt of such applications, no applications, filings, or selections for the lands embraced therein will be permitted until so directed; except applications for leases under this act.

4. Notice of Application.

When an application for a lease is filed in the district land office, notice thereof shall be published at the expense of the applicant in a general newspaper to be designated by the register, published in the county where the lands are situated, describing the lands embraced therein, stating the purpose of the application and that it will be submitted to the Commissioner of the General Land Office for action within thirty days from the date fixed therein, advising all adverse claimants or protestants that if they desire to object or protect any interest as against the application, prompt action to that end should be taken; and further advising the public that any other applications for lease of the same lands may be filed at any time during said period of publication without publication of notice of said second or further application, in which case applications so filed will be considered as prescribed in section 5 hereof. Proof of publication will be required prior to action by the commissioner on the application for lease.

5. Action in General Land Office.

On the receipt of the application or applications in the General Land Office, the same will be considered, investigation made if deemed necessary, and submitted to the Secretary of the Interior with appropriate recommendation and report as to the

proper action to be taken thereon, giving due consideration to the proposed effectual development of the alleged sodium deposits, and the amount of capital to be invested therein; the award of priority in case of conflicting applications to be determined by the respective proposed investments, date of productive development proposed by the several applicants, and any equities that may exist in one or more of the applicants resulting from improvement or development under claims made under other laws.

6. Lease by Permittee.

The permittee for lands in class B has a preference right within the two years of his permit to file application to lease any or all of the land included in his permit, upon showing to the satisfaction of the Secretary of the Interior that he has discovered a valuable deposit of sodium thereon. Any lands not leased by the permittee will be subject to be leased by others under the terms set forth in sections 3, 4, and 5 of these regulations.

7. Verity of Statements.

The verity of all representations contained in applications for leases shall be deemed an essential thereto, and a moving consideration to the award of a lease, if such action is taken; misrepresentations in this respect will be treated as a proper ground for proceedings in forfeiture, as provided in section 31 of the act.

8. Lease a Waiver of Other Claims.

The acceptance of a lease, under the provisions of this Act will be construed as a waiver and relinquishment of all claims on the part of the applicant for any lands embraced within said lease and claimed under the provisions of any other law.

9. Form and contents of Application.

Applications for leases must be under oath, and should be filed in the proper district land office, addressed to the Commis-

sioner of the General Land Office. No specific form of application is required, and no blanks will be furnished, but it should cover in substance the following points:

(a) Applicant's name and address.

(b) Proof of citizenship of applicant, by affidavit of such fact, if native born; if naturalized, by a certified copy of a certificate thereof in the form provided for use in public land matters, unless such copy is on file. If the applicant is an association, each member thereof must show his qualifications as above stated; if a corporation, a certified copy of the articles of incorporation must be filed, together with a showing as to the residence and citizenship of its stockholders.

(c) A statement that the applicant has no lease under the provisions of this section, nor any other application for lease thereunder pending, and that he does not hold interests in such leases or applications which, with the land applied for, will exceed 2,560 acres in the same State.

(d) Description of land for which the lease is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case the description should be connected to some corner of the public land surveys where practicable, or to some permanent landmark. If the land is unsurveyed, the applicant, after he has been awarded the right to a lease, but before the issuance thereof, will be required to deposit with the United States surveyor general of the State where the land is located the estimated cost of making a survey of the lands, any balance remaining after the work is completed to be returned. This survey will be an extension of the public land surveys over the tract applied for, the leased land to be conformed to legal subdivisions of such survey when made.

(e) Evidence that the land is valuable for its sodium content, except so much thereof as is necessary for the extraction and reduction of the leased minerals, with a statement as accurate as may be of the character and extent and mode of occurrence of the sodium deposits in the lands applied for.

(f) Proposed method, so far as determined, as to the process of mining and reduction to be adopted, the diligence with which such operations will be carried on, and the contemplated invest-

ment in reduction works and development, and the capital available therefor.

(g) The application shall be accompanied by a notice for publication, in duplicate, prepared for the signature of the register, in substantially the following form:

Serial No.

DEPARTMENT OF THE INTERIOR,
U. S. LAND OFFICE AT,
....., 19...

NOTICE OF APPLICATION FOR SODIUM LEASE.

Notice is hereby given that in pursuance of the act of Congress, approved February 25, 1920,, whose post office address is, has made application for sodium lease covering the following described lands:

.....

Any and all persons claiming adversely any of the above described lands are required to file their claims in this office on or before, otherwise their claims will be disregarded in the granting of such lease.

....., *Register*.

The register will fix the time within which adverse or conflicting claims may be filed at not less than 30 nor more than 40 days from first publication.

10. Disposition of application.

(a) The application will be given the current serial number by the register and receiver, noted on their records, and the notice for publication will be signed by the register.

(b) One copy of the signed notice will be delivered to the applicant, who will cause the same to be published in a newspaper to be designated by the register, of general circulation, and best adapted to give the widest publicity in the county where the land is situated. If the land is in two or more counties, notice must be published in each. Notice must also be posted in the local land office during the period of publication.

(c) At the expiration of the period of publication the evidence of publication and posting in said office should be promptly transmitted by the register and receiver to the Commissioner of the General Land Office, with a statement of the status of the land involved as to conflicts, withdrawals, protests, and any other matters that may be necessary to determine the availability of the land or deposits therein for lease.

11. Form of lease.

Serial No.

DEPARTMENT OF THE INTERIOR,
U. S. LAND OFFICE AT

SODIUM LEASE.

Date—Parties.—This indenture of lease entered into in triplicate this day of, 19...., by and between the United States of America, acting in this behalf by, Secretary of the Interior, party of the first part, hereinafter called the lessor, and party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved February 25, 1920 (Public No. 146), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," hereinafter referred to as the act, which is made a part hereof, witnesseth:

Sec. 1. Purposes.

That the lessor, in consideration of the rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to mine, remove, and dispose of all the sodium and other minerals in, upon, or under the following-described tracts of land situated in the County of, State of, and more particularly described as follows, to-wit:, containing acres, more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways,

or reservoirs necessary to the full enjoyment hereof, together also with the right to use any timber, stone, or other materials on said land in connection with the operations to be conducted hereunder, for an indeterminate period, upon condition that at the end of each twenty-year period succeeding the date hereof such readjustment of terms and conditions may be made as the party of the first part may determine; provided, that this lease shall extend only to or include any right or interest in the lands, or the minerals therein, reserved to the United States under any entry that may be allowed, or patent that may issue, or may have issued, with a reservation of minerals to the United States.

Sec. 2. Covenants of Lessee.

In consideration of the foregoing the lessee hereby agrees:

(a) To invest in actual development, or improvements, upon the land leased, or for the benefit thereof, the sum of dollars, of which sum not less than one-third shall be so expended during the first year succeeding the execution of this instrument and a like sum each of the two succeeding years, unless sooner expended; and submit annually, at the expiration of each year for the said period, an itemized statement of the amount and character of said expenditure during such year.

To furnish a bond in the sum of \$10,000, conditioned upon the expenditure of the amount specified in (a) hereof, and after said investment has been made, a similar bond in the sum of \$5,000, conditioned upon compliance with the terms and provisions of this lease.

(b) *Royalty*.—To pay a royalty of per cent (not less than $12\frac{1}{2}$ per cent) of the amount or value of the production of the lands leased.

(c) *Rents*.—To pay the receiver of the district land office on all leases annually, in advance, beginning with the date of the execution of the lease, the following rentals: Fifty cents per acre for the first calendar year or fraction thereof; and one dollar per acre for each and every calendar year thereafter during the continuance of the lease, such rental for any year to be credited against the royalties as they accrue for that year.

(d) *Taxes*.—To pay when due all taxes assessed and levied under the laws of the State upon the improvement, output of mines, or other rights, property, or assets of the lessee.

(e) *Monthly statements*.—To furnish monthly certified statements in detail in such form as may be prescribed by the lessor of the amount and value of output from the leasehold as a basis for determining amount of royalties. All books and accounts of the lessee shall be open at all times for the inspection by any duly authorized officer of the department. Falsification of such statements shall be a basis for action for the cancellation of the lease.

(f) *Plats and reports*.—To furnish annually a plat in the manner and form prescribed by the Secretary of the Interior showing all prospect and development work on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands, or on lands covered by permit issued under section 25 of the act, as well as any buildings, reduction works, or equipment, situated elsewhere and owned or operated in conjunction with, or as a part of, the operations conducted hereunder, accompanied by a report, in detail, as to the stockholders, business transacted, assets and liabilities of the lessee, together with a statement of the amount of sodium, and other minerals produced and secured by operations hereunder, and the cost of production thereof.

(g) (*Sodium in solution*).—Where the minerals are taken from the earth in solution, such extraction shall not be within five hundred feet of the boundary line of leased lands without permission from the Secretary of the Interior.

(h) *Diligence—Prevention of waste—Health and safety of workmen*.—To develop and produce in commercial quantities, with reasonable diligence, the sodium and other mineral deposits susceptible of such production in the lands covered hereby; to carry on all mining, reducing, refining, and other operations, in a good and workmanlike manner in accordance with approved methods and practice, having due regard to the health and safety of miners and other employees, the prevention of waste and the preservation and conservation of the property for future productive operations, observing all State laws relative to the health

and safety of such workmen and employees, all mining and related productive operations to be subject to the inspection of the lessor.

(i) *Forfeiture of lease*.—To deliver up to the lessor on the termination of this lease, as a result of forfeiture thereof pursuant to section 31 of the act, the lands covered thereby, together with any land permission for the use of which has been granted under and pursuant to the provisions of section 25 of said act, including all fixtures, improvements, and appurtenances, other than machinery, tools, and personal property located and used above ground, situate on any of said lands, in good order and condition, so as to permit of immediate continued operation to the full extent and capacity of the leased premises: *Provided*, That on such forfeiture the lessor, his agent, licensee, or lessee shall have the exclusive right, at the lessor's option and at any time within six months from such forfeiture, to purchase such machinery, tools, and personal property and employees, all mining and related productive operations to be determined in the manner prescribed in section 5 of this lease. (*Sic.*)

(k) *Reserved deposits*.—To comply with all statutory requirements where the surface of the lands embraced herein has been disposed of under laws reserving to the United States the mineral deposits therein.

(l) *Assignment*.—Not to assign or sublet, without the consent of the Secretary of the Interior, the premises covered hereby.

(m) *Excess holdings*.—To observe faithfully the provisions of section 27 of the act whereunder this lease is executed, as to the interest or interests that may be taken or acquired under leases authorized by said act.

(n) *Minimum production*.—Beginning with the fourth year of the lease, except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, to produce each year and pay the royalty thereon of not less than tons of sodium, in some of the forms specified herein from the premises covered hereby.

Sec. 3. The lessor expressly reserves:

(a) *Easements and rights of way*.—The right to permit for

joint or several use such easements or rights of way upon, through, or in the lands hereby leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act; and the treatment and shipment of the products thereof, by or under authority of the Government, its lessees or permittees, and for other public purposes.

(b) *Disposition of surface.*—The right to dispose of the surface of the land embraced herein under existing law, or laws hereafter enacted, in so far as said surface is not necessary for use of the lessees in extracting and removing the deposits therein.

(c) *Monopoly and fair prices.*—Full power and authority to carry out and enforce all the provisions of section 30 of said act to insure the sale of the production of said leased lands to the United States and to the public at reasonable prices, to prevent monopoly, and to safeguard the public welfare.

Sec. 4. Surrender and Termination of Lease.

The lessee may, on consent of the Secretary of the Interior first had and obtained, surrender and terminate this lease at any time after the first four years of the term herein provided for, by giving six months' notice in writing to the lessor, and upon payment of all rents, royalties, and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary of the Interior that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered by such relinquishment.

Sec. 5. Purchase of Materials, Etc., on Termination of Lease.

That on the termination of this lease, pursuant to the last preceding section, the lessor, his agent, licensee, or lessee, shall have the exclusive right, at the lessor's election, to purchase at any time within six months, at the appraised value thereof, all

buildings, machinery, equipment and tools, whether fixtures or personalty, placed by the lessee in or on the land leased hereunder, or on lands covered by permit under section 25 of the act, save and except underground improvement, machinery, equipment, or structures, which shall be and remain a part of the realty without further consideration or compensation; that the purchase price to be paid for said buildings, machinery, equipment, and tools to be purchased as aforesaid shall be fixed by appraisal of three disinterested and competent persons (one to be designated by each party thereto and the third by the two so designated), the valuation of the three or a majority of them to be conclusive; that pending such election to purchase within said period of six months none of said buildings, or other property, shall be removed from their normal position; that if such valuation be not requested, or the lessor shall affirmatively elect not to purchase within said period of six months, the lessee shall have the privilege of removing said buildings and other property except said underground equipment and structures as aforesaid.

Sec. 6. Judicial Proceedings in Case of Default.

If the lessee shall fail to comply with the provisions of the act, or make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or of the general regulations promulgated and in force at date hereof, and such default shall continue for ninety days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 31 of the Act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any other cause of forfeiture, or for the same cause occurring at any other time.

Sec. 7. Heirs and Successors in Interest.

It is further agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to,

the heirs, executors, administrators, successors, or assigns of the respective parties thereto.

Sec. 8. Unlawful Interest.

It is also further agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part of this lease, or derive any benefit that may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States, approved March 4, 1909 (35 Stat., 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

In witness whereof—

THE UNITED STATES OF AMERICA,

By
Secretary of the Interior, Lessor.
 *Lessee.*
 *Lessee.*
 *Lessee.*

Witnesses:

.....

III.

USE PERMITS FOR CAMP SITE AND REFINING WORKS.

Section 25 of the Act of February 25, 1920, "to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," provides:

"That in addition to areas of such mineral land which may be included in any such prospecting permits or leases the Secretary of the Interior, in his discretion, may grant to a permittee or lessee of lands containing sodium deposits, and subject to the

payment of an annual rental of not less than 25 cents per acre, the exclusive right to use, during the life of the permit or lease, a tract of unoccupied nonmineral public land not exceeding forty acres in area for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease."

In accordance with the provisions of this section the following regulations are prescribed, by which a permittee or lessee under the act may acquire the right therein granted.

1. Application may be made by the permittee or lessee identifying by serial number his permit or lease, setting forth in detail the specific reasons why it is necessary for the applicant to have the use of an additional tract of land for a camp site, refining works, or other purposes, connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

2. The application should contain a description of the lands by legal subdivisions, if surveyed, or, if not surveyed, by the approximate description thereof as it will appear when surveyed, for which the right of use is desired, together with a statement of the particular reasons why it is especially adapted thereto, either in point of location, topography, or otherwise, and that it is unoccupied, nonmineral land.

3. Use permits granted hereunder will be for indeterminate periods, dependent in that respect upon the existence of the permit or lease made the basis of the right authorized by section 25; upon the termination of such permit or lease all rights secured hereby will also cease and terminate, and such condition shall be expressly recognized and stated in the application.

4. No blank forms of application will be furnished to applicants hereunder, but they will be guided by the foregoing as to the essential requirements of the application, which will be verified by the affidavit of the applicant.

5. The rental of not less than 25 cents per acre must be paid the receiver of the proper local land office as soon as applicant is notified of the allowance of the permit, and a like sum each year thereafter in advance.

IV.

FORM OF USE PERMIT FOR CAMP SITE OR REFINING WORKS.

The form of use permit issued under section 25 of the Act of February 25, 1920, will be in substance as follows:

THE UNITED STATES OF AMERICA,
Department of the Interior.

USE PERMIT.

Know all men by these presents, that the Secretary of the Interior, under and by virtue of section 25 of the act of Congress entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium, on the public domain," approved February 25, 1920, has granted to and does hereby grant to, the holder of, bearing serial number, the exclusive right, so long as needed, used, and occupied, to use, during the life of the aforesaid, the following-described tract of land, to wit: for a camp site, refining works, and other purposes connected with and necessary to the proper development and the use of the deposits covered by the aforesaid, all rights hereunder to cease and terminate upon the termination of the aforesaid and conditioned upon the payment in advance of 25 cents per acre for the area covered hereby.

In witness whereof I have affixed my signature hereto and the seal of the department this day of, 19...

.....,
Secretary of the Interior.

V.

REPEALING CLAUSE, ETC.

Repealing and Saving Clause.

Section 37 of the Act provides that hereafter the deposits of

coal, phosphate, sodium, oil, oil shale, and gas referred to and described in the act may be disposed of only in the manner provided by the act, "except as to valid claims existent at date of passage of this act, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under said laws, including discovery." As to sodium claims, those claims initiated under the pre-existing law may go to patent which, at the date of the act, were valid mining locations, duly made and maintained as such on lands subject to such location at the date initiated.

Fees and Commissions.

(a) For receiving and acting upon each application for prospecting permit or lease filed in the district land office in accordance with these regulations, there shall be paid by the applicant a fee of \$2 for every 160 acres or fraction thereof in the application, such fee in no case to be less than \$10, the same to be considered as earned when paid and to be credited in equal parts to the compensation of the register and receiver within the limitations provided by law.

(b) Registers and receivers shall be entitled to a commission of 1 per cent of all moneys received in each register's office, to be equally divided between the register and receiver. Such commission will not be collected from the applicant or lessee in addition to the moneys otherwise provided to be paid.

It should be understood that the commissions herein provided for will not affect the disposition of the proceeds arising from operations under the act, as provided in section 35 thereof; also that such commissions will be credited on compensation of registers and receivers only to the extent of the limitation provided by law for maximum compensation of such officers.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved May 28, 1920.

JOHN BARTON PAYNE,
Secretary of the Interior.

FORM OF APPLICATION FOR SODIUM PERMIT.

To the Hon. Commissioner of the General Land Office:

Your petitioner, Edward T. Noland, respectfully represents:

1. That his Post Office address is No. 624 Charles Block City and County of Denver, Colorado.

2. That he is a native born citizen of the United States.

3. That the land for which he desires a permit is Section 27 Township 3, South, Range 17 west in Sevier County, State of Utah containing 640 acres, which land is vacant or unclaimed (or that said section has been filed upon by four locations as valuable placer mining ground but that the annual labor has not been kept up by the locators who have long since abandoned the same, or otherwise according to the facts).

4. That the reasons why the land is believed to offer a favorable field for prospecting are: that there are indications of sodium values on the surface and that frequent attempts have been made by prospectors to discover valuable deposits but so far without substantial success for want of sufficient development.

5. As to the proposed method for conducting exploratory operations, your petitioner says that he has \$500 available for such operations and that he has already contracted with competent miners to do \$200 worth of work on the premises, by driving a tunnel at a point which would cut the supposed sodium deposit within one hundred feet and will prosecute the driving of such tunnel to the point where such deposits should be struck.

6. That your petitioner has had no previous experience in operations of this nature.

7. Exhibit A hereto attached contains references to responsible parties as to petitioner's character, reputation and business standing with the addresses of such parties.

Your petitioner therefore applies for a sodium prospecting permit for the period of two years under the terms of Section 23 of the Act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain, approved Feb. 25,

1920 and the regulations of the Land Department issued under the said Act.

Edward T. Noland.

Verify according to form on page 313.

The above application to be filed in the local Land Office and to be forwarded to the General Land Office under the first Rule 6 of the above regulations. No advertisement or public notice is required. The proceeding is *ex parte* until application for lease is made.

CHAPTER 69.

SUB-HEADS OF THE ACT AND RULES COVERING THE MINERALS, THE PARTIES AND THE LEASABLE DOMAIN.

Gas.

There are no sections confined specifically to gas. It is necessarily involved with mention of oil and the prescribed form of lease demands the same percentage on the gas as on the oil and contains no reference to the mode of delivery but doubtless the royalty would be paid on the valuation in almost every case.

Helium.

This mineral mentioned in section 1 of the Act is a very rare element, discovered in the sun by spectroscope in 1868 and on earth in 1895. It is not quite as light as hydrogen gas but avoids the danger of combustion when used in aerostatics. It is found in the gas of a few wells and the government right to it is reserved for use in army balloons.

Phosphates and Sodium. Mill Sites.

There is a special provision not applicable to any other form of mineral allowing a 40-acre mill site to a phosphate claim in section 12, and to a sodium claim in section 25.

Parties.

The parties entitled to the benefits of the Act are;

1. Citizens of the United States.
2. Any association of such citizens.
3. Any corporation organized under the laws of the United States or of any State or Territory.
4. In the case of coal, oil, oil shale and gas to municipalities.

Proof of Citizenship. Aliens. Reciprocity.

Proof of citizenship at the proper time is required in all proceedings seeking for permit, lease or patent from the Land Office, but the ownership of stock in corporations by declarants or aliens is not prohibited except by the last clause of section 1, by which citizens of other countries which deny like rights and privileges to American citizens, are denied the right to own or control stock.

Although an alien may not patent mining property he has a standing to protect his title or beneficial interest either before the Land Department or in the Courts. *Ginaca v. Peterson*, 265 Fed. 904.

When the United States parts with its title, by patent to mineral land it has no further control of ownership, working or production, but under the 1920 Act the government becoming a lessor instead of a grantor, it retains an interest in the land which would protect its constitutional jurisdiction to enforce this proviso.

Where such aliens, in defiance of the proviso, obtain control of the company it might become a material fact in proceedings to set aside the lease, but such ownership by a single stockholder would hardly invalidate the entire document.

This proviso applies to citizens of nonreciprocating countries, not to aliens generally.

Citizens of other countries denying like privileges to citizens of the United States are precluded and may not become owners of interests through stock or any corporate agency.

Declarants.

It will be noted that persons who have declared their intentions to become citizens who were allowed to locate under the old law are precluded by this Act.

Citizenship of Corporation.

The regulations require allegations of the residence and citizenship of the stockholders, on applications by corporations, and if alien ownership appeared on such showing it would be on the

department to raise the point that the citizenship shown brought the case within the terms of the reciprocity proviso.

Alaska.

Sec. 22 is confined to this country and covers only oil and gas lands. Details of applications under this section are found in regulations 22 and 23.

Special limitations on oil and gas are found also in the two provisos of section 13.

Alaska is entirely excepted from the provisions of the coal sections 2-6, so that coal land in that country is governed by previous Statutes special to that Territory.

Except as to oil, gas, and coal as above noted, no other specific clauses refer to Alaska so that oil shale, phosphates and sodium claims in that country are governed by the general clauses of the Act.

The general tenor of the Act where Alaska is specially mentioned is to give more liberal terms to that country.

Five oil and gas permits or leases may be issued for Alaska Sec. 22.

Exclusions.

The exclusions are:

1. National Parks.
2. Military Reservations.
3. The Naval Petroleum Reserves.

4. Lands granted under the Appalachian Forest Act. These exclusions are all referred to in the first Section of the Act.

5. Indian lands and reservations altho not specially mentioned are impliedly excluded and Rule 2 of the Regulations, notes this point.

Land reserved as a national park would of course be well known in the district. Military reservations are few in number and well known, but the lands covered by the naval reserves cover an immense amount of acreage and are especially referred to on pages 514-516.

The lands covered by the Appalachian Forest Act is a very limited area. See page 510.

Local Exceptions.

Barring special provisions as to Alaska which are elsewhere mentioned, the only local exemptions from the Act are sodium claims in San Bernardino County, California, and a few coal entries in Wyoming mentioned in footnote at page 293.

Saving Clause.

Section 37 saves the rights of all valid claims on any of the minerals mentioned in the Act which would include oil placers and oil shale placers and the like locations on phosphate and sodium deposits and all rights to coal land which had become vested under the old law.

It saves all such claims which, valid in every other respect, were short on discovery and allows such claims to become valid in all respects when they make a discovery.

The words "thereafter maintained" used in the section mean that the annual labor must be kept up.

There is also a saving clause in Section 27 referring to certain forfeited claims which protects interests in such claims "acquired by descent, will, judgment or decree" that is by innocent parties, for the period of two years.

The department places its construction of sec. 37 in its regulations, rule 32 printed on page 364.

CHAPTER 70.

SUB-HEADS OF THE ACT AND RULES COVERING PREFERENCE, PERMITS AND LEASES.

Limitations of Acreage.

Limitations of acreage to claims of any sort are scattered through the Act without any apparent theory upon which the distinctions are based and are tabulated as follows:

Coal. 40 acre tracts or multiples of 40 acres, limit 2560 acres. Secs. 2-6.

Phosphates. Limit 2560 acres. Secs. 6 and 10.

Coal to municipal corporations. Limit 320 to 2560 acres according to the population of the city. Sec. 8.

Free coal, not for sale, no express limitation. Sec. 8.

Oil and gas permits on undeveloped territory. Limit 2560 acres. Sec. 13.

Oil and gas leases; one-fourth of the amount of the permit which would be 640 acres, but not less than 160 acres on undeveloped territory. Sec. 14.

Oil and gas lease on known geological structure, 640 acres. No permits are granted on this structure. Sec. 17.

On Proclamation claims deeded back to the United States, if on known geological oil and gas structure, limit 3200 acres. Sec. 18.

On Proclamation suits compromised by the President, there seems to be no limitation. Sec. 18A.

Mineral on severed land limit 2560 acres. Must be within an area not greater than a township. Sec. 20.

Sodium limit 2560 acres, with mill site of 40 acres. Secs. 23, 25.

On Shale Lease, 5120 acres. Sec. 21.

Alaska.

The limit of an oil and gas lease or permit is 1280 acres. Sec. 22.

Limitations on the Number of Leases.

Sec. 19. This Section is confined to oil placer locations prior to October 1, 1919, validly located except as to discovery.

By implication, the limitation is to the size of each claim, 160 acres, but there is no limitation on the number of claims.

Sec. 21. Last Proviso. Only one oil shale lease is allowed to any one person.

Sec. 27. One coal lease, one phosphate lease, one sodium lease, in any one State is the limit to applicants.

Three oil or gas leases in any one State to a single party.

Not more than one lease on the same geological structure of the same field.

"No corporation shall hold any interest as a stockholder of another corporation in more than such number of leases."

No railroad corporation shall be given a coal permit or lease except for its own use for railroad purposes and only one permit or base for each 200 miles of its line within the State. Sec. 2.

Five oil and gas permits or leases may issue in Alaska. Sec. 22.

Leases and Permits on Unsurveyed Land, Size and Shape.

There are repeated directions in several sections for the segregation of land where there are no government subdivisions. They should have been covered in one section but are scattered promiscuously. They seem to be fairly uniform on the following points:

1. The survey is to be by the United States but at the expense of the applicant covered by a deposit. Any surplus over the expense to be returned.

2. The segregated tract to be in compact form, the length not to exceed two and one half times the width.

These provisions are to be found as to phosphate lands in section 10, as to permits on oil and gas lands on nonproven ground in section 13.

As to the area selected by a successful permittee out of his total area, in section 14.

In less definite terms as to oil shale in section 21.

In like general terms as to sodium in section 24. These two last cited sections leave the shape to be under the regulations of the department, which of course, would require them to be in compact form.

The surveys for pipe lines are to be under regulations prescribed by the Secretary. Sec. 28.

The provisions of the Act are reinforced by the regulations. Reg. 4 d, Reg. 25 c.

The diagram on application for permit, must show all wells and improvements. Reg. 25 g.

Term of Lease.

Coal leases are to be indeterminate as to duration of term. Sec. 7. Phosphate leases the same, Sec. 11.

Also oil shale, Sec. 21. The term of oil and gas leases whether on proven or unproven ground is twenty years. Secs. 13, 17 and 18.

SEC. 23 provides for two year leases on sodium but SEC. 24 makes auctioned leases on sodium indeterminate.

Two years is the limit of an oil and gas permit. Sec. 13. Permits may run for four years in Alaska, Sec. 13.

Waste of Oil and Gas.

Section 16, reinforced by section 30, requires that both lease and permit shall provide for reasonable precautions to prevent waste of oil and gas and also to protect the oil sand from injury, prescribing suit for judicial forfeiture for breach of such covenant.

The regulations require that bond in \$1000 shall be furnished by the permittee to protect such covenant and prescribe a form for the bond. Reg. 4, subsection I. Reg. 6 subsection C. The form of the bond is printed on page 336.

Waste is to be provided against in oil shale leases. Sec. 21. And in sodium leases. Sec. 24.

**Payment of Wages. Eight Hour Day. Minors and Women.
Coal Weighing.**

All these enumerated incidents are to be provided for by the terms of the lease under the provisions of section 30.

Strikes.

Strikes are to be anticipated and allowed for in the coal leases. Sec. 7. And in phosphate leases. Sec. 11.

Severed Lands.

Where there has been agricultural entry on lands not withdrawn or classified at the time of entry as mineral (but not including railroad lands) the holder of the surface title has a preference right to a permit and lease. This seems merely to mean that the party holding the surface right has the privilege to become the lessee on the mineral, but it does not seem to cut out any other applicant for the mineral right on the same ground which is allowed to all citizens under the terms of section 34.

Reservation of Surface.

In any lease the surface and use of the surface may be reserved for further disposition saving the surface use to the lessee to the extent necessary for extracting and removing the oil, gas or other minerals, but such reservation must be determined before the lease is signed. The last proviso of the section is an obscure authorization to issue "permits for easements here-in provided to be reserved". Sec. 29.

Advertisements.

The act and rules require public newspaper notice of auction for bids on the geological section tracts. Sec. 17. Reg. 14.

Advertisements for thirty days in a local newspaper are demanded before the issue of coal leases. Sec. 2.

Advertisements are permissably allowed on phosphate leases. Sec. 9, and on the proposal to sell the royalties on an oil and gas lease. Sec. 36.

CHAPTER 71.

SUB-HEADS OF THE ACT AND RULES AS TO RENTS AND ROYALTIES.

Rents and Royalties.

Wherever rent is demanded it is payable in advance but is to be credited on the subsequent royalties.

Coal.

Royalty not less than 5 cents per ton of 2000 lbs. and an acreage rent of not less than 25 cents per acre for the first year, 50 cents for the second, third, fourth and fifth years and \$1. for each succeeding year. The lease may provide for a minimum tonnage to be protected by the advance rentals. Sec. 7.

On leases of coal for private use, and on municipal coal leases the product to be sold at cost, no rent or royalty is charged. Sec. 8.

Phosphates.

Two per cent on the gross value and the rent not under 25 cents per acre for the first year, 50 cents on each of the next four years and \$1 on the later years. Sec. 11.

Oil.

On the one-fourth leased to the permittee, 5 per cent to be covered by the advance rent of \$1 per acre. Sec. 14.

On the three-fourths reserved by the government not less than 12½ per cent. Sec. 14.

Between the date of production and date of filing application for lease, the permittee pays 20 per cent. Sec. 15.

On leases within the known geologic structure not less than

12½ per cent protected by advance rent of \$1. per acre besides the bonus. Sec. 17.

On Pickett Act claims one-eighth of the oil and gas already produced. Future royalties covered by the lease, not less than 12½ per cent to be fixed by the Secretary. Sec. 18.

On the no-discovery claims covered by section 19 on the known geologic structure, not less than 12½ per cent. On the severed lands, not less than 12½ per cent. Sec. 20.

Oil Shale.

The lessee to pay 50 cents per acre each year to protect the royalty, which is not fixed by section 21.

Sodium.

On leases provided for in the first paragraph of Sec. 24 the royalty to be not under one-eighth of the production.

On leases provided for in the further clauses of the section, the royalty is the same, one-eighth to be protected by an advance rent of 50 cents per acre on the first year and \$1. for each successive year.

The Distribution of the Royalties

is provided for in sec. 35. Payment of oil and gas royalties in kind may be demanded by the Secretary of the Interior. Sec. 36. The sale of oil and gas royalties is covered by the same section.

Reduced Oil or Gas Production. Other Waivers.

Reduction of oil and gas royalties where production falls off, is provided for in section 17. The last sentence of section 17 doubtless refers to this reduction clause. The sentence speaks of the last "paragraph" altho the section as printed contains but a single paragraph. It probably was intended to mean the preceding clause or sentence which is the reduction clause.

Rents and royalties on oil shale may be waived for five years. Sec. 21.

Royalties in Alaska may be waived for the first five years. Sec. 22.

Six months suspension of work may be allowed on coal leases. Last proviso of section 7.

Phosphate lessees may be allowed to suspend work for twelve months. Sec. 11, last proviso.

Distribution of Royalties.

Sec. 35 enacts that 10 per cent of all proceeds of sale, bonuses, rents and royalties "excepting those from Alaska" shall be credited to miscellaneous receipts, and all receipts from the Naval Petroleum Reserves go to the same account.

Seventy per cent of past production and $52\frac{1}{2}$ per cent of future production go to the reclamation fund of June 17, 1902. 32 Stat. L. 388. Comp. L. Sec. 4700.

Twenty per cent of past production and $37\frac{1}{2}$ per cent of future production is to go to the proper State for the support of education or roads as its legislature may direct.

Bonus.

A bonus is demanded where land on the known geological structure is offered at auction. Sec. 17.

CHAPTER 72.

SUB-HEADS OF THE ACT AND RULES AS TO RENEWALS, EXTENSIONS, SURRENDER, READJUSTMENT, ASSIGNMENTS, SUB-LEASES AND FORFEITURE.

Renewals.

Section 17 refers to renewal clauses in oil and gas leases on the known geological structure, and section 14 provides for the same sort of renewals on leases on non proven territory.

Extension of Permit.

The two year limit of the permit may be extended for not exceeding two more years by the Secretary of the Interior under sec. 13.

Surrender.

This right, so material and so common in oil and gas lease, is recognized in section 30 where the lessee is, if the Secretary consents, allowed to surrender and be discharged from further obligations under the lease. He may be allowed to surrender any legal subdivision of the area as well as the whole leased tract.

Special provision is made for the surrender of a coal lease upon the issue of a new consolidated lease. Sec. 5.

Readjustment.

Leases in Alaska are subject to readjustment at the end of twenty years. Sec. 22.

Readjustment of coal leases at the end of twenty years is provided for in Sec. 7. Of sodium leases, Sec. 24. Of phosphate leases. Sec. 11. Of oil shale, Sec. 21.

Combined or Modified Coal Leases.

Under sections 3, 4 and 5 coal leases may be modified with the approval of the Secretary of the Interior by adding additional tracts surrendering worked out ground or consolidating two or more leases. The new lease to be within the specific limit of 2560 acres.

Consolidation of Phosphates Leases.

Under section 6 there may be a consolidation of phosphates leases the same as is provided for coal leases.

Assigns and Sub-leases.

The rights of assignees of permits and leases are declared in the last paragraph of section 19 and section 30 forbids all assigning and subletting except with the consent of the Secretary of the Interior.

Forfeiture

By judicial action is expressly provided for, for allowing waste of mineral or damage to the oil sand under Sec. 16.

For holding monopolistic or other interest "in violation of this Act" by the terms of Sec. 27.

For failure to comply with the easement and pipe line conditions. Sec. 28.

For failure to comply with the Act or violation of the regulations or breach of the covenants of the lease by Sec. 31.

Sec. 26 contains the only authorization of forfeiture or cancellation by the department without judicial sanction, and such authority is confined solely to permits.

CHAPTER 73.

SUB-HEADS OF THE ACTS AND RULES ON EASEMENTS, PROTECTION AND TAXES.

Pipe Lines.

Pipe lines are granted right of way for the carriage of oil and gas through the public lands, including the forest reserves, to the extent of the ground occupied by the pipe line and 25 feet on each side.

The survey, application and other incidents are to be under the control of the Secretary of the Interior and upon the express condition that the company is to be a common carrier. Sec. 28.

The next proviso of the same section forbids discrimination against the government or any person and requires the terms of the proviso to be inserted in every oil lease. Paragraph C. of section 3 of the form of lease printed in the regulations, attempts to comply with this proviso.

The last proviso of the section is a useless repetition of the fact that rights of way shall be subject to the terms of the section and that failure to comply with such term or with the regulations shall be ground for forfeiture.

Section 29 enacts that the permits, leases and licenses issued under the Act shall reserve the right to provide for the joint or several use of rights of way and other easements.

See, Right of Way for Pipe Line, chapter 89.

Railroads.

Railroads are not allowed to hold coal permits or leases, except for their own use which limitation of use is to be expressed in the papers issued to them and they are not allowed to hold more than one permit or lease for each two hundred miles of track within the State. Sec. 2.

Protection.

Section 16 provides that a margin of 200 feet shall be protection ground. No wells are to be sunk on it unless the adjoining land is held by private owners: that is, not held by the United States or their lessees or permittees. The theory of and necessity for protection, are stated in chapter 9.

Such a margin of 200 feet around a square 160 acre tract would cover 1,952,000 out of 6,969,600 square feet and would amount to more than one-fourth of the leased area.

No well is to be sunk within 660 feet of a naval reserve well without the consent of the lessee unless the protection is released by the President, sec. 18, rule 19, subsection b.

Taxation.

The right of the States to tax is expressly authorized in section 32 which would include the authority to collect license charges.

It will be noted that the clause referred to, is not a grant of power but simply the statement that the Act is not to be construed to deny such right where it lawfully exists. The power of the State to tax possessory rights on the public domain has long been recognized. See page 154.

CHAPTER 74.

SUB-HEADS OF THE ACTS AND RULES ON THE PROCLAMATION AND RELIEF CLAUSES.

Claims without Discovery.

Section 19 is confined to a single class of claims, oil placers which had a location valid in all respects except discovery. And where the owners have expended \$250 in work or improvement on each claim.

The section says "upon which discovery had not been made prior to the passage of this Act" and it is limited to persons who were claimants on October 1, 1919.

A claimant covered by the terms of this section is allowed a permit on nonproven territory or a lease if his claim is on the known geological structure.

But before he is so entitled he must quit claim to the United States. Sections 20 and 21 of the regulations go into details of the procedure.

Assuming that a placer claim on which no discovery had been made is not a vested right, the Act seems to be valid as to this class of claims.

The section says "where any such person has heretofore made such discovery" he may get a lease upon quit claiming his possessory title. But it seems obvious that when discovery has been made at any time before the passage of the Act if the party had been in diligent prosecution of work under the Pickett Act such party is entitled upon completion of \$500. of improvements to proceed to patent.

There is nothing in the section that we can see to deprive him of this right and it is strengthened by the saving clause of section 37 of the Act. It would be an extraordinary case where such claimant of his own volition would elect to accept a permit or lease instead of a patent if entitled to such patent.

The date of October 1, 1919 mentioned in the section seems to have been arbitrarily selected. We know of no Act which would affect the status of a claimant going into effect on that date.

Class of Beneficiaries under the Proclamation.

Section 18 is an involved enactment intended for the relief of a limited class of claimants on withdrawn lands on the known geologic structure under the Proclamation of September 27, 1909.

1. The applicant must quit claim to the United States all interest claimed before July 3, 1910. Such quit claim must be filed within six months from the date of the approval of the Act.

2. There must have been drilled one or more wells to discovery. Naval reserves are of course excepted.

3. He must pay as royalty one-eighth of the Oil or Gas already produced and there must be no adverse claimant. He must be in undisputed possession of his claim. He then becomes entitled to a lease of 20 years on not more than one half of the area, the royalty to be fixed by the department. The suits brought by the government shall thereupon be dismissed and any interned fund distributed.

Although the first paragraph of the section speaks of the claimant being in undisputed possession, a further paragraph allows the Secretary to grant leases to one or more of them where there are conflicting claimants. The first paragraph possibly requires the possession to have been disputed before July 1, 1919.

Assigns from Claimants

since September 1, 1919, who hold excess acreage are debarred from the benefits of the section, but the proviso to such effect does not apply to exchange of land made before January 1, 1920. The proviso is complicated and its exact language must be studied in every case. See page 278.

Proclamation Compromises.

Section 18A is a special clause authorizing the President to direct the compromise of government suits on withdrawn land. Such authorization seems to be limited to twelve months after the approval of the Act and of course any such compromise would be *res inter alios acta* so far as any claimants not parties to the litigation are concerned.

M. O. R.—28.

CHAPTER 75.

SUB-HEADS OF THE ACT AND RULES ON CONTROLLED CLAIMS.

Adverse Claims.

Under section 18 where there are conflicting claims under the Pickett Act the Secretary is authorized "to grant leases to one or more of them as shall be deemed just." If such claimants under the Pickett Act have no standing against the government title it would doubtless be considered ministerial action in disposing of the public land. But if they have any such equities as would give them a standing in court his action would be judicial and probably would be enquired into by the Courts upon a proper bill.

Section 2 authorizes the Secretary to consider the equitable right of claimants to coal. The remarks above under Sec. 18 would apply to such coal claims.

Arbitration.

Under the last clause of section 31 arbitration may be provided for in the lease. There is a widespread prejudice in favor of arbitration because it is a catching word seeming to suggest fairness, equity and avoidance of litigation.

In general terms there are three modes of relief in case of disagreements between lessor and lessee.

1. The *ex parte* action of the lessor, declaring forfeiture—which is necessarily one sided and apt to be harsh.
2. Relief by Court action, which is due process of law, the usual, and ordinarily the preferable procedure, and:
3. Arbitration, where everything depends on the individuality

of the board and the personal domination of one of the arbitrators, too often determines the decision.

By the terms of Sec. 18A, the President is authorized to compromise suits under the withdrawal by the Proclamation of September 27, 1909.

Nothing is said about the instance where there might be two or more claimants to lands so compromised, but no party could complain of such action unless he had a protectible equity in which case doubtless his action might still lie against the favored party holding evidence of title issued by the department.

CHAPTER 76.

SUB-HEADS OF THE ACT AND RULES ON THE DE- PRECATORY CLAUSES.

Corporations

are limited the same as individuals as to the number of leases that can be held. But the next clause of section 27 and evidently intended to limit corporate control of oil territory, is confused perhaps beyond intelligible construction.¹

Possibly the association holdings and the corporate holdings are to be classed separately as to each kind of mineral. That is to say; they may hold to the limit in oil and gas leases, to the limit in coal leases and to the limit in any other kind of lease.

As to the limit of a member of an association the following instance may be based on a correct construction:

Supposing that a member of such an association holds a 160 acre oil lease individually, he may as a member of such association holding other oil leases to the aggregate of 2,560 acres, hold 2,400 shares out of 2,560 shares representing as many acres which 2,400 acres added to his individual 160 acres, would reach the limit of 2,560 acres.

When it is attempted to construe the language of the section with reference to corporations, it can hardly be said that a hold-

¹ Sec. 27. And no person or corporation shall take or hold any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, which, together with the area embraced in any direct holding of a lease under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, for any kind of mineral leased hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee under this Act.

er of so many shares of stock out of a total capital stock of so many shares, is interested in that proportion in the acreage, because the value of the stock has no specific relation to the acreage, or to the value of the acreage.

All that further can be said when the question of corporate holdings is reached, is that the possible complications which can arise are innumerable and the ultimate construction, if any meaning can be forced into this part of the section, must be left to the Courts on the particular array of facts which the case may present.

Fraud.

Section 18 contains the following clause:

"No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section."

The same paragraph is repeated in sections 19, 21 and 22.

Under the rule of statutory construction, *expressio unius exclusio alterius*, it would be implied that fraud would not be an objection to the issuing of leases and permits under other sections. For the repetition of the clause in the later sections, there is absolutely no excuse and for its use at all very little, because it is doubtless true that proof of fraud would defeat any application to the department as it would defeat a suit at law on the maxim that fraud vitiates all things which it touches.

Trusts.

Trusts are anticipated by the last proviso of section 27 and proof of such combination is made ground for forfeiture by decree of Court. The phrase "prevention of monopoly" is used in section 30.

Combinations.

The combination of several interests for constructing a refinery or carrying on the business of a refinery, or of establishing or

constructing a common carrier pipe line, or an oil or coal railroad are not forbidden under any of the provisos of the Act, but such combination is subject to the approval of the Secretary of the Interior. Sec. 27.

But if such combination threatens to become a conspiracy or a monopoly, or an unlawful trust, it is forbidden and forfeiture may be decreed by appropriate Court proceedings as declared in the last proviso of the same section.

CHAPTER 77.

SUB-HEADS OF THE ACT AND RULES ON PRACTICE. MISCELLANEOUS.

Bids.

On the rejection of bids for purchase of royalty the Secretary may readvertise. Sec. 36. And the Secretary is allowed the right to reject all bids for leases on the three-fourths oil rights reserved by the government. Sec. 14. Bids on phosphate deposits are authorized by section 9. Coal leases may be disposed of by competitive bidding. Sec. 2.

Quit Claim to the United States.

A relinquishment in the form of a quit claim deed to the United States is required from applicants under sections 18 and 19 of the Act and from Alaska claimants under section 22.

This relinquishment is referred to in sections 18 and 21 of the Act and is demanded under rule of the department. The ordinary forms of quitclaim deed in common use would comply with the requirements set out in rules 18h and 20g.

Verification.

All statements, recommendations or reports required by the Secretary of the Interior must be under oath unless otherwise specified by him. Sec. 33 of the Act and Reg. 25.

This verification may be taken before the judge or Clerk of a Court of Record having a seal, or a notary public, or the register or receiver or any other officer authorized by the laws of the State or of the United States and does not seem to be required to be made within the land district.

Fees and Commissions.

The charges of the register and receiver are fixed by section 31 of the regulations under authority of section 38 of the Act and are printed on page 364.

CHAPTER 78.

THE OIL SHALE REGULATIONS.

Section 21 of the Leasing Act is the only section confined specifically to oil shale.

The applicant petitions for a lease for an "indeterminate period" which undoubtedly means until the pay shale is exhausted.

No preliminary permit is provided for, nor any bonus, nor any bidding, only a specific lease for the selected tract.

The royalty is to be fixed by the department protected by rent payable in advance that is to say: the specific rent of fifty cents per acre is to be credited to the royalty as it becomes due.

On one of the provisos of the Act, that any person having a valid claim on January 1, 1919 shall upon relinquishment of such claim be entitled to a lease, the department in rule 7 puts its own construction. This proviso is peculiar: it allows the lease to reach 5120 acres, which is eight full sections being the largest acreage found in the Act. This is its only enlargement for the benefit of the claimant. Its other provisions require a surrender of his title, which means a disclaimer of his right to a patent. It would be purely a business question whether the claimant should surrender, or assert his vested rights to go to patent.

If the applicant believes that the royalty under a lease would be less than the cost of his patent he might apply under that proviso, otherwise the proviso is not to his advantage.

This Rule 7 uses the words "prior to January 1, 1919" referring to the date beyond which shale claims are not recognized. Section 21 which it quotes says "on January 1, 1919." The rule would cut out locations made on that date of January 1, the first day of the year, being a date on which every year many relocations are made, and the Act, not the rule, would control on this point.

The rule quoted implies that the claimant should clear himself

of the insinuation of fraud, which is contrary to the rule of practice in any Court or department that we know of.

The same rule, 7, says that claimants of such preferred rights to leases should present same promptly otherwise the land may be leased to others, in which case any preference rights under this proviso will be deemed to have lapsed.

If the department were to grant a lease covering lands already protected by a valid location it would bring up a contest at once between the claimant and such lessee and if the claimant proves his vested rights, such unauthorized lease by the department would be void. Such issue would arise by suit in Court brought by either party outside of the department's jurisdiction.

Petition and Notice.

As no permit is granted for the prospecting or developing of an Oil Shale claim, the first step to secure the right to work such a claim is by an application for a lease of which we give the following form, which should be accompanied with a form of notice for publication, and by the affidavit of citizenship of the applicant. (For form of this notice see page 446.)

FORM OF PETITION FOR OIL SHALE LEASE.

To the Hon. Commissioner of the General Land Office:

Your petitioner C. W. Thompson respectfully represents:

1. That his address is 1812 Lawrence Street, City and County of Denver, State of Colorado.

2. That he is a native born citizen of the United States, as shown by his affidavit herewith filed.

3. That your petitioner has no lease under the provisions of any section of the Oil Leasing Act approved February 25, 1920, nor any application for lease thereunder pending, and that he does not hold interests in such lease or any application for lease which with the land applied for will exceed 5,120 acres.

4. That the land upon which the Oil Shale Lease is now applied for is not officially surveyed but that it covers 160 acres in square form which has been marked and staked by your petitioner by lines running due north, south, east and west.

5. To-wit: Beginning at a point marked by a substantial stake as corner No. 1 the North West corner and c. w. r. the initials of the petitioner, and the name of the claim, to-wit: The Rattlesnake claim, from which corner a United States locating monument bears North, 10° East, at the distance of 3100 feet, and running thence east 2660 feet to corner No. 2; thence South 2660 feet to Corner No. 3; thence West 2660 feet to corner No. 4 and thence North 2660 feet to the place of beginning. At each corner is a substantial stake marked with its number and the initials of your petitioner. Situate in unorganized Mining District, County of Rio Blanco, State of Colorado.

6. That your petitioner is ready to deposit with the United States Surveyor General of the State of Colorado the estimated cost of making a survey of the land as required by rule 3. d. of the Oil Shale Regulations, Circular No. 671, issued by the Department of the Interior on March 11, 1920.

7. That the land applied for is valuable for its oil shale contents and shows an outcrop for at least 500 feet in length of an oil shale bed between strata of sandstone, which oil-shale bed is at least 20 feet in thickness with a dip of about 5° from the horizontal, assays from the shale showing an average value of about 30 gallons of crude oil to the ton of rock.

8. The proposed method of mining so far as determined is to be by an incline from which levels or laterals will be run from each side of the incline, the stopping to be overhead from the levels, leaving pillars or arches for support to prevent caves. The proposed method for working the shale and extracting its values is under the patented process of C. W. Thompson, which has been successfully tested at several places in the State of Colorado.

9. To work said shale will require an investment in the building of reduction works on or near the premises of at least \$10,000, and your petitioner has in the bank of Meeker, Colorado, \$2,000 of that sum and substantial guaranties for the advance of the remainder as soon as this lease prayed for is secured.

10. A notice of application as required by Rule of the Department 3 g, in duplicate, is herewith enclosed. (Form of this notice on page 446.)

Respectfully submitted,
C. W. Thompson.

STATE OF COLORADO, }
 County of Rio Blanco. } ss.

Before me, the subscriber a Notary Public, in and for said county, personally appeared C. W. Thompson who being first duly sworn, saith: that he is the petitioner named in the foregoing application for lease, that he has read the same and knows the contents thereof and that the same and the matters and things therein stated are true of his own knowledge.

C. W. Thompson.

Sworn and Subscribed to before me this 1st day of November, A. D. 1920.

My Commission expires January 30, 1923.

D. A. Burgess,
 Notary Public.

Subdivision e. of rule 3 seems to imply that the surface necessary for the extraction plant is nonmineral but it can be complied with, as it must be assumed that the department knows that not every acre of any sort of mining claim is mineral bearing, and the plant could as well be placed over the mineral bearing bed as anywhere else.

Rule 4. (b) requires a notice to be posted on the bulletin and published, in the nature of the notice required on application for patent to a lode but inviting a controversy in the Land Office, which would be wholly different from the adverse claim anticipated in the published notice on application for patent and would be simply a Land Office contest similar to like disputes between agricultural claimants.

OIL SHALE REGULATIONS.

(Circular No. 671.)

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., March 11, 1920.

REGISTERS AND RECEIVERS,

UNITED STATES LAND OFFICES.

SIRS: Section 21 of the Act of Congress approved February

25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," authorizes the Secretary of the Interior to lease any deposits of oil shale belonging to the United States, and the surface of such lands as may be necessary for the extraction and reduction of the minerals leased. The following rules and regulations will govern the issuance of such leases:

1. *Qualifications of applicants.*—Pursuant to section 1 of said Act, leases may be made to (a) a citizen of the United States; (b) an association of such citizens; (c) a corporation organized under the laws of the United States, or of any State or Territory thereof, provided that no stockholders are citizens of nonreciprocating countries, as provided in section one of the Act; or (d) a municipality.

2. *Lands and deposits to which applicable.*—The lease may include such deposits and the surface of so much of the land containing same, or of land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, the aggregate area not to exceed 5,120 acres.

Such leases may not include lands or deposits in (a) national parks, (b) forest reserves created under the Act of March 1, 1911 (36 Stat., 961), known as the Appalachian Forest Reserve Act, (c) lands in military or naval reservations, (d) Indian reservations, or (e) ceded or restored Indian lands, the proceeds from the disposition of which are credited to the Indians.

All permits or leases for the exploration for or development of oil or gas deposits under this Act within the limits of national forests or other reservations, or withdrawals to which this Act is applicable, shall be subject to and contain such conditions, stipulations and reservations as the Secretary of the Interior shall deem necessary for the protection of such forests, reservations, or withdrawals, and the uses and purposes for which created.

3. *Form and contents of application.*—Applications for leases must be under oath, and should be filed in the proper district land office, addressed to the Commissioner of the General Land Office. No specific form of application is required, and no blanks

will be furnished, but it should cover in substance the following points:

(a) Applicant's name and address.

(b) Proof of citizenship of applicant, by affidavit of such fact if native born; if naturalized, by a certified copy of a certificate thereof in the form provided for use in public land matters, unless such copy is on file. If the applicant is an association, each member thereof must show his qualifications as above stated; if a corporation, a certified copy of the articles of incorporation must be filed, together with evidence that none of its stockholders are citizens of another country the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country; if a municipality a showing of (1) the law or charter and procedure taken by which it has become a legal body corporate; (2) that the taking of a permit or lease is authorized under such law or charter; and (3) that the action proposed has been duly authorized by the governing body of such municipality.

(c) A statement that the applicant has no lease under the provisions of this section, nor any other application for lease thereunder pending, and that he does not hold interests in such leases or applications which, with the land applied for, will exceed 5,120 acres.

(d) Description of land for which the lease is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case the description should be connected to some corner of the public land surveys where practicable, or to some permanent landmark. If the land is unsurveyed, the applicant, after he has been awarded the right to a lease, but before the issuance thereof, will be required to deposit with the United States surveyor general of the State where the land is located the estimated cost of making a survey of the lands, any balance remaining after the work is completed to be returned. This survey will be an extension of the public land surveys over the tract applied for, the leased land to be conformed to legal subdivisions of such survey when made.

(e) Evidence that the land is valuable for its oil shale content, except so much thereof as is necessary for the extraction and re-

duction of the leased minerals, with a statement as accurate as may be of the character and extent and mode of occurrence of the oil-shale deposits in the lands applied for.

(f) Proposed method, so far as determined, as to the process of mining and reduction to be adopted, the diligence with which such operations will be carried on, and the contemplated investment in reduction works and development, and the capital available therefor.

(g) The application shall be accompanied by a notice for publication, in duplicate, prepared for the signature of the register, in substantially the following form:

Serial No. DEPARTMENT OF THE INTERIOR,
U. S. LAND OFFICE AT,
..... 19...

NOTICE OF APPLICATION FOR OIL SHALE LEASE.

Notice is hereby given that in pursuance of the Act of Congress, approved February 25, 1920, whose post-office address is has made application for oil shale lease covering the following described lands:

Any and all persons claiming adversely any of the above described lands are required to file their claims in this office on or before, otherwise their claims will be disregarded in the granting of such lease.

....., *Register.*

The register will fix the time within which adverse or conflicting claims may be filed at not less than thirty, nor more than forty days from first publication.

4. *Disposition of application.*—(a) The application will be given the current serial number by the register and receiver, noted on their records, and the notice for publication will be signed by the register.

(b) One copy of the signed notice will be delivered to the applicant, who will cause the same to be published in a newspaper to be designated by the register, of general circulation, and best adapted to give the widest publicity, in the county where the land is situated. If the land is in two or more counties, notice

must be published in each. Notice must also be posted in the Local Land Office during the period of publication.

(c) At the expiration of the period of publication the application, together with evidence of publication and posting in said office, should be promptly transmitted by the register and receiver to the Commissioner of the General Land Office with a statement of the status of the land involved as to conflicts, withdrawals, protests, and any other matters that may be necessary to determine the availability of the land or deposits therein for lease.

5. *Action on application.*—As the area and form of lands leased hereunder is entirely discretionary with the Secretary of the Interior, if the area applied for is considered too large, or the form unsatisfactory, or in case of conflicting applications, the application may be held for rejection, but the applicant given an opportunity to amend his application in conformity with requirements. Should the application be found satisfactory by the Commissioner of the General Land Office, he will submit it to the Secretary of the Interior with a recommendation that a lease for the described lands be awarded the applicant. If the right to a lease be granted, the applicant will be required, within thirty days from notice, to pay the rental of 50 cents per acre for the first year, which the receiver will carry in his unearned account, until the lease is acted upon, and to furnish a lease duly executed on his part, which lease will be substantially in the following form:

6. *Form of lease..*

DEPARTMENT OF THE INTERIOR,
Serial No. U. S. LAND OFFICE AT

OIL SHALE LEASE.

Date—Parties.—This indenture of lease entered into in triplicate this day of, 192., by and between the United States of America, acting in this behalf by the Secretary of the Interior, party of the first part, hereinafter called the lessor, and, party of the second part, hereinafter called the lessee, under and pursuant to the act of Congress approved Feb-

ruary 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," witnesseth:

1. *Purposes.*—That the lessor in consideration of the rents and royalties to be paid, and the covenants to be observed as hereinafter set forth, does hereby grant and lease to the lessee the right and privilege to mine and dispose of all the oil shale or the products thereof that may be mined under the terms of this lease from the following described lands, containing acres, together with the right to construct thereon all such works as may be necessary or convenient for the reduction of such shale and the preparation of its oil or other contents for market.

2. *Subject to limitations of Act.*—It is expressly understood that this lease is granted subject in all respects to the conditions, limitations, and provisions of the Act under which this lease is made, which Act, so far as it relates to oil shale, is hereby made a part hereof to the same extent as if incorporated herein.

3. *Rights reserved.*—The lessor expressly reserves the right to grant, upon such terms as the Secretary may determine to be just, such easements or rights of way, including easements in tunnels, upon, through, or in the lands leased, as may be necessary to the working thereof, or of other lands containing coal, oil, oil shale, phosphate, gas, or sodium, and the treatment or shipment of any of the products of such lands by, or under authority of the United States, its lessee or permittee, and for other public purposes.

4. The lessee, in consideration of the lease of the rights and privileges aforesaid, hereby covenants and agrees as follows:

(a) *Investment.*—To invest in mining operations, reduction plants, or other equipment for the mining and reduction of the minerals leased, as follows: That is to say [*Here give detailed description of proposed reduction plant and other equipment or works*], upon the lands included herein the sum of dollars, of which sum not less than one-fifth be expended during the year succeeding the execution of this instrument, and a like sum each year for the succeeding four years, unless such amount may be sooner invested.

(b) *Bond.*—To furnish within thirty days' after signature of

the lease, a bond in the sum of one-half the amount to be expended each year, conditioned upon the expenditure of such sum within said period, and submit annually at the expiration of each year for the said period an itemized statement as to the amount and character of the expenditure during said year.

(c) *Annual rentals*.—To pay as an annual rental, for each acre or part thereof covered by this lease, the sum of fifty cents per acre each year during the life of this lease, all such annual payments of rental to be paid in advance to the receiver of the proper local Land Office on the anniversary of the date hereof, and to be credited to the first royalties becoming due hereunder during the year for which rental was paid, unless during any of the first five years of the existence of the lease the lessor waives the payment of royalty or rental.

(d) *Royalty*.—To pay to such receiver a royalty of per centum of the market value of the commercially extractable crude oil content, and other primary products of all shale mined and sold or reduced, unless the Secretary of the Interior waives the payment of such royalty during any or all of the first five years of the lease. The lessee agrees to make and keep a record of, by methods and practices satisfactory to the lessor, all necessary gagings, measurements, or analyses of all shale mined and sold or reduced, and all products manufactured therefrom by the lessee, to afford an adequate basis for computing and ascertaining the amount and grade of the crude and other primary products on the basis of which such royalty is to be paid; the decision of the Secretary of the Interior as to the market value of such products on which the royalty is computed shall be conclusive. The royalty must be paid on the last day of March, June, September, and December, each payment to cover the royalty on all production during the preceding three months.

(e) *Reports*.—To keep accurate account of the amount and value of the production under the lease, and to make a report on the last day of March, June, September, and December of the amount and value of the production during the preceding three months; also the amount invested in the property, the cost of operation, contracts in force as to disposal of proceeds, and depreciation of the property used in working the leased land; the

books, records, property leased, and reduction works to be subject to inspection at any time by an accredited agent of the lessor.

(f) *Sublease*.—Not to assign this lease or any interest therein, nor sublet any portion of the leased premises, or any of the rights and privileges herein granted without the written consent of the lessor being first had and obtained.

(g) *Diligence*.—To proceed diligently to develop and mine the oil shale upon the leased lands, and extract therefrom the oil and other valuable contents by the most approved methods, and in such a manner as to utilize all of the shale that can be successfully mined, leaving no available mineral abandoned where the mining is being conducted.

(h) *Regulations*.—To comply with such regulations as have been adopted by the Secretary of the Interior and were in force at date of this lease relative to (1) the safety and welfare of the workmen; (2) the prevention of undue waste; and (3) the exercise of reasonable diligence, skill, and care in the conduct of mining operations, which are made a part hereof as fully as if incorporated in this lease; it is also agreed that the workday shall not exceed eight hours for underground workers, except in cases of emergency, prompt report of which must be made to the lessor; that no boy under sixteen years of age, nor any girl or woman shall be employed in any mine below the surface; that the workmen shall have absolute freedom to purchase their supplies wherever they may desire; that wages shall be paid twice each month in lawful money of the United States.

(i) *Interest in leases*.—To observe faithfully the provisions of section twenty-seven of the Act, defining the interest or interests that may be taken, held, or exercised under leases authorized by the Act.

5. *Prevention of monopoly*.—The lessor reserves full power and authority to carry out by order, and to enforce all the provisions of section thirty of the Act, to insure the sale of the production of such lands to the United States and to the public at reasonable prices, and for the prevention of monopoly, and the lessee hereby covenants and agrees to comply with any such reasonable order issued in pursuance hereof.

6. *Relinquishment*.—The lessee, upon consent in writing of the lessor, may make a written relinquishment of all rights under the lease, and thereupon be relieved of all future obligations hereunder, or he may with like consent surrender any legal subdivisions of the area included herein, upon payment of all rents, royalties, and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary of the Interior that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made provision for the preservation of any mines or productive works, or permanent improvements on the lands covered by such relinquishment.

7. *Purchase of improvements*.—On the termination of this lease pursuant to the last preceding section, the lessor, his agent, licensee, or lessee, shall have the exclusive right, at the lessor's election, to purchase at any time within six months, at the appraised value thereof, all buildings, machinery, equipment and tools, or other personalty placed by the lessee in or on the land leased hereunder, save and except underground improvements, machinery, equipment, or structures, which shall be and remain a part of the realty without further consideration or compensation; that the purchase price to be paid for said buildings, machinery, equipment, and tools to be purchased as aforesaid, shall be fixed by appraisal of three disinterested and competent persons (one to be designated by each party hereto, and the third by the two so designated), the valuation of the three or a majority of them to be conclusive; that pending such election to purchase within said period of six months, none of said buildings or other property shall be removed from their normal position; that if such valuation be not requested, or the lessor shall affirmatively elect not to purchase within said period of six months, the lessee shall have the privilege of removing said buildings and other property, except said underground equipment and structures as aforesaid.

8. *Forfeiture*.—If the lessee shall make default in the performance of any of the terms, covenants, and stipulations of this lease, and such default shall continue after written notice thereof by the Secretary of the Interior or his authorized representative,

the lessor may, by appropriate proceedings, have this lease forfeited and canceled in a Court of competent jurisdiction, but this provision shall not be construed as depriving the lessor of any legal or equitable remedy which the lessor would otherwise have. A waiver of any particular cause for forfeiture shall not affect the right to proceed against the lessee for any other cause of forfeiture, or for the same cause occurring at any other time.

9. *Heirs and successors.*—It is further agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

10. *Readjustment of royalties.*—The lessor shall have the right to readjust and fix the royalties payable hereunder at the end of twenty years from the date of this lease, and to so readjust at the end of such succeeding period of twenty years, but the lessee may, if dissatisfied with the royalties imposed, relinquish and surrender this lease in the manner provided in sections 6 and 7 hereof.

11. *Unlawful interest.*—It is also further agreed that no member of or delegate to Congress, or resident commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part of this lease, or derive any benefit that may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat., 1109), relating to contracts, enter into and form a part of this lease, so far as the same may be applicable.

In witness whereof—

THE UNITED STATES OF AMERICA.

By [L. S.]

Secretary of Interior.

Witnesses:

.....
.....
.....
.....

..... [L. S.]
.....
.....
.....

7. *Preferred right to a lease.*—Under a proviso of section 21 of the Act, a person having a valid claim to oil shale deposits under existing law, prior to January 1, 1919, shall, upon the relinquishment of such claim or claims, be entitled to a lease for not exceeding 5,120 acres, provided "that no claimant for a lease, who has been guilty of any fraud or who had knowledge or reasonable ground to know of any fraud, or who has not acted honestly and in good faith, shall be entitled" to such lease.

The beneficiaries of this proviso are those persons or their grantors, who, in the honest belief that the mining laws were applicable to oil shale deposits, have proceeded in absolute good faith to make mineral locations, lode or placer, of shale deposits, and who have, in all respects, fully complied with the provisions and requirements of such laws, including discovery.

The same form of procedure in making applications for lease should be followed as in other cases, except that, in addition to the points referred to in section 3 of any ordinary application, an application for a preference right lease should be accompanied by a full and detailed showing under oath, duly corroborated, of the facts on which the applicant claims a preferred right, together with copies of the location notices, abstracts of title, and such other evidence as may be deemed necessary to establish the claimant's preferred right and entire absence of fraud. Claimants of such preferred rights to leases should present same promptly; otherwise the lands may be leased to others, in which case any preference rights under this proviso will be deemed to have lapsed.

FEES AND COMMISSIONS.

Under the authority of section 38 of the Act, the following fees and commissions are prescribed for transactions under the Act:

(a) For receiving and acting on each application for a permit, lease, or other right filed in the district Land Office in accordance with these regulations, there shall be paid a fee of two dollars (\$2) for every 160 acres, or fraction thereof, in such application, but such fee in no case to be less than ten dollars (\$10), the same to be paid by the applicant and considered as earned when paid,

and to be credited in equal parts on the compensation of the register and receiver within the limitations provided by law.

(b) A commission of one per cent (1%) of all moneys received in each receiver's office to be equally divided between the register and receiver; such commission will not be collected from the applicant, lessee or permittee, in addition to the moneys otherwise provided to be paid.

(c) It should be understood that the commission here provided for will not affect the disposition of the proceeds arising from operations under the Act as provided in section 35 thereof; also that such commission will be credited on compensation of registers and receivers only to the extent of the limitation provided by law for maximum compensation of such officers.

Very respectfully,

CLAY TALLMAN,

Commissioner.

Approved: March 11, 1920.

ALEXANDER T. VOGELSANG,

Acting Secretary.

CHAPTER 79.

THE COAL LAND REGULATIONS.

We print in this chapter the regulations of the department as to coal land under the 1920 Act.

The procedure ordinarily is by petition either for lease or for prospecting permit.

A party desiring to lease coal land, files a petition addressed to the department in substantially the following form:

FORM OF PETITION FOR COAL LEASE.

To the Honorable Secretary of the Interior.

Washington, D. C.

Your petitioner, Leverett Davis, a native-born citizen of the United States, whose postoffice address is Denver, Colorado, respectfully represents:

That he desires a lease on four contiguous quarter sections (describing them) in Township South, Range West, containing 640 acres in Carbon County, Wyoming. (If not surveyed describe it substantially as in form on page).

That a mine has been opened about one mile to the north of said tract, known as the Pluto Coal Mine and about two miles to the east is the Dark Moon Coal mine, both presumably on the same deposit which is supposed to underlie the above described tract.

The ground is on a flat sagebrush mesa broken by arroyas. The nearest railroad station is the town of Walcott in said county, distance three-quarters of a mile, which would be the natural market or shipping point and from the proposed point of opening work on said tract to the railroad station, there is a good dirt wagon road.

So far as known the land contains a bed of bituminous coal

from six to nine feet thick. The coal is noncoking but good for all fuel purposes.

If an analysis of the coal has been made, add paragraph:

An analysis of the coal from said tract made by Victor Blanc of 1709, California St., Denver, Colorado, a reputable chemist and assayer, is hereto attached as part of this petition.

The vein has been opened at two points on the outcrop within the tract described, by shallow pits.

Your petitioner expects to develop the vein by an incline driven on its slope at about ten degrees from the horizontal to be operated by steam power. He has raised a capital of ten thousand dollars for developing purposes (of which sum \$5,000 is on deposit in the bank of Walcott) and expects an average daily output of one hundred tons per day.

Your petitioner is willing to pay a royalty of five cents per ton on the mine run of coal and in the absence of a better bid than his own, if the land is awarded to your petitioner, he will within thirty days from auction of lease, execute a lease thereof and comply with its terms in good faith.

Respectfully submitted,

Leverett Davis.

(Verify as on page 443).

The above form has been drafted to closely follow the instructions contained in rule 9.

Prior Equities of Petitioner.

Rule 4 recognizes the equity of a petitioner who had improved or occupied or claimed the land in good faith before the date of the approval of the Act in accord with the first of several provisos in section 2 of the Act.

This proviso is an appeal to the conscience of the Secretary, which would naturally be exercised by accepting a lower royalty than would be agreed to if the claimant had no such equity, but as the petition does not bring the lease but merely an auction to sell a lease to the highest bidder, the reduction of royalty would avail to the overbidder who had no equity, the same as to the petitioner, and would be of absolutely no value as a recognition of his equity.

The notice calling for the auction might quote a lower royalty to the petitioner if he became lessee and a higher royalty to all other bidders. Then if the bonus offered by the outside bidder exceeded that offered by the petitioner the equity would not be protected although, such an offer might induce the petitioner to raise his bid on the bonus: but by any such procedure the benefit of his equity would be endangered and perhaps sacrificed. It is difficult to say how such equity could be protected by any such practice but under the sweeping clause of the section "by such other methods as he may by general regulations" adopt, special provisions could be made to protect the equity. It has not been covered by the rules so far promulgated.

Opening Coal Lands to Bids.

It seems under the Act and the regulations that the petitioner may select a particular tract and apply for it, or the Secretary may of his own volition divide the land into lots and throw the locality open to general auction.

Rule 11 provides for discussion and amendment of the terms offered by the petition. When they are approved the auction is to be called. The only advantage which the petitioner has over others at such auction is that he becomes the bidder if no other person offers a higher bonus.

Draft of the Lease.

Rule 15 seems to contemplate the preparation or drafting of the lease by the bidder according to the form prescribed in rule 18, altho doubtless the department in the course of its practice would furnish printed blanks. The other requirements of the intended leases are clearly stated in the same rule.

Amended Lease.

There are provisions in the Act, recognized by rule 17, by which the lifetime of the lease may be extended and new contracts executed within the maximum of 2560 acres.

The "similar procedure" mentioned in the last clause of the rule, cannot mean that such land is to be again offered at auction

or let to any person other than the holder of the original lease, except possibly as to the additional acreage.

Construction of Lease.

The terms of the form of lease set forth at length in rule 18 are drastic but perhaps no more so than in private leases on coal land for long terms contemplating large production.

A very fair construction of such a lease is found in *St. Louis Union Trust Co. v. Galloway Coal Co.*, 193 Fed. 106 where the right to work by instroke is considered and a forfeiture was denied where willful violation was not proved. The opinion considers the effect of faults and squeezes which are to be expected in any coal vein and decides generally that where good faith appears the covenants of such a lease will not be too severely enforced.

To comply literally with all the terms of such a lease as is printed under rule 18 is practically impossible but it cannot be supposed that the government will be less fair than a private owner of coal lands.

Instroke.

When the question of instroke arises (the right to interlock the working of coal mines) we would assume that no distinction would be made between the rights of the United States and the rights of a private lessor. Instroke is hinted at in section 2 (h) of the form although not specifically allowed. But where not prohibited it is implied. *Schobert v. Pittsburg Coal, etc., Co.*, 254 Ill. 474; Ann. Cas. 1913B 1104, 40 L.R.A.(N.S.) 826, 98 N. E. 945; *Whalley v. Ramage*, 10 Weekly Rep. 315, 8 M. R. 52; *Jegon v. Vivian*, L. R. 6 Ch. App. 742, 8 M. R. 628; *Lewis v. Fothergill*, L. R. 5 Ch. App. 103, 15 M. R. 271.

Permits.

Permits to prospect for coal are provided for in the second proviso of section 2 of the Act and are recognized in rules 19-24.

These rules prescribe the procedure to obtain a permit which are substantially the same as those detailed for an oil permit.

Under these rules the permittee on development of the coal becomes entitled to a lease without any competitive bidding.

Free Leases.

The final division of the rules applies to those provisos of the Act which allow licenses to small domestic users and to towns and cities, without rent or royalty.

The free coal to individuals or associations but not to corporations would doubtless under the construction of section 8 by rule 24 allow of full supplies to run any private plant although not limited to strictly domestic purposes.

The department however places a strict construction on the municipal leases, not allowing such coal to be sold to any sort of factory, store or plant of any kind. Such a limitation would be impossible to enforce. No city could pretend to supply its householders with coal and deny it to their stores and small business establishments.

CIRCULAR NO. 679.

COAL LAND LAWS AND REGULATIONS.

(EXCLUSIVE OF ALASKA.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
April, 1, 1920.

Register and Receiver, United States Land Offices.

SIRS: Under authority of the Act of Congress approved February 25, 1920 (Public No. 146), entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," the following rules and regulations are prescribed for the administration of the provisions of said Act relative to coal:

1. *Methods of disposition.*—Sections 2 to 8, inclusive, of said Act authorize the Secretary of the Interior to—

(1) Divide into leasing units and award leases of coal lands, and coal deposits owned by the United States;

(2) Issue permits to prospect unclaimed and undeveloped areas of coal lands and coal deposits; and

(3) Issue limited licenses or permits to prospect for, mine, and take for use coal from public lands.

2. *Lands to which applicable.*—The Act applies to the coal lands, or the deposits of coal, classified and unclassified, owned by the United States, including those in national forests, and including the coal deposits reserved under laws authorizing entries and patents with reservation to the United States of such deposits; also to coal lands in ceded or restored Indian reservations the proceeds from the disposition of which are the property of the United States. It does not include land or deposits in (a) national parks, (b) forests created under the Act of March 1, 1911 (36 Stat., 961), known as the Appalachian Forest Reserve Act, (c) lands in military or naval reservations, (d) Indian reservations, nor (e) ceded or restored Indian lands, the proceeds from the disposition of which are credited to the Indians.

All permits or leases for the exploration for or development of coal deposits under this Act within the limits of national forests or other reservations or withdrawals to which this Act is applicable shall be subject to and contain such conditions, stipulations, and reservations as the Secretary of the Interior shall deem necessary for the protection of such forests, reservations, or withdrawals, and the uses and purposes for which created.

3. *Who may take.*—Leases and prospecting permits may be issued to citizens of the United States, associations of citizens, corporations organized under the laws of the United States or any State or Territory thereof, and to municipalities. Limited licenses or permits for the mining of coal may be issued to citizens, associations of citizens, and municipalities. Leases may also be issued to operating railroad companies to mine coal for their own use for railroad purposes, subject to certain restrictions found in section 2 of the Act.

4. *Equitable rights.*—Equitable rights of claimants who, prior

to the date of the Act, occupied and improved coal lands in good faith may be recognized in awarding leases of such lands, in which cases the rents and royalties, not less than the minimum provided for leases under the Act, will be fixed by the Secretary of the Interior.

5. *Repealing and saving clause.*—Section 37 of the Act provides that hereafter the deposits of coal, phosphate, sodium, oil, oil shale, and gas referred to and described in the Act, including lands and deposits described in joint resolution of August 1, 1912 (37 Stat. 1346), may be disposed of only in the manner provided in the Act "except as to valid claims existent at date of passage of this Act, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery."

As to coal, those claims initiated under the pre-existing law may go to patent, which, at the date of the Act, were covered by valid coal declaratory statements or applications to purchase which are timely followed up and perfected in accordance with the controlling coal land laws (secs. 2348 to 2352, Revised Statutes), and the regulations thereunder (Circular No. 557); likewise, one who has opened and improved a mine of coal on unsurveyed lands may proceed to perfect his claim within sixty days from the filing of the official plat of survey, pursuant to section 2349 R. S.

6. *Fees and commissions.*—(a) For receiving and acting upon each application for a permit, lease, or license filed in the district Land Office in accordance with these regulations, there shall be paid a fee of \$2 for every 160 acres, or fraction thereof, in such application, but such fee in no case to be less than \$10, the same to be paid by the applicant and considered as earned when paid, and to be credited in equal parts on the compensation of the register and receiver within the limitations provided by law.

(b) Registers and receivers shall be entitled to a commission of 1 per cent of all moneys received in each receiver's office, to be equally divided between the register and receiver; such commission will not be collected from the applicant, lessee, or permittee in addition to the moneys otherwise provided to be paid.

It should be understood that the commissions herein provided for will not affect the disposition of the proceeds arising from operations under the Act, as provided in section 35 thereof; also that such commissions will be credited on compensation of registers and receivers only to the extent of the limitation provided by law for maximum compensation of such officers.

I. Coal Leases.

7. *Leasing units.*—Under section 2 of the Act, no coal land or deposits may be leased until after division into suitable leasing units or tracts. Such leasing units may be created by the Secretary of the Interior (a) pursuant to the petition of a qualified applicant, that is, qualified to take a lease under the Act, or (b) on his own initiative.

Leasing units will not exceed 2,560 acres in area. All material factors, such as character and depth of the coal deposits, topography of the land, situation with respect to adjacent private holdings of coal lands, the proximity of rail or water transportation, and outlet for other lands in the immediate vicinity, as well as the investment reasonably required to provide the requisite development and operating facilities, will be given consideration in the establishment of leasing units.

Such leasing units will comprise contiguous tracts, except in cases where it appears that noncontiguous tracts can be practically worked on a single mine or unit.

Leasing units may include, in whole or in part, unsurveyed land, but a survey of the land will be made and the leasing unit conformed to such survey prior to the execution of a lease thereof.

8. *Minimum development.*—An actual bona fide expenditure for mine operation, development or improvement purposes of the amount determined by the Secretary, and stated in the lease offer hereinafter referred to, is adopted as the minimum basis for granting leases, with the requirement that not less than one-third of the required investment shall be expended in development of the mine during the first year, and a like amount each year for the two succeeding years, the investment during any one year over such proportionate amount for that year to be credited

on the expenditure required for the ensuing year or years. A bond executed by the lessee, with approved corporate surety, will be required to be furnished, in the sum of \$10,000, conditioned upon the expenditure of the specified amount of investment. After said investment has been made a similar bond in the sum of \$5,000, conditioned upon compliance with the terms of the lease, will be required.

9. *Petitions for leasing units.*—Any person, association of persons, or corporation qualified to take a lease may file in the proper district Land Office a petition to divide coal lands into leasing units for purpose of lease. Such petition should set forth—

(a) Name and post-office address of petitioner.

(b) Statement showing qualifications of petitioner to take a lease under the Act; proof of citizenship to be made by affidavit if native born; if naturalized, by certified copy (special form for land cases) of certificate thereof if copy is not already on file; if a corporation, by certified copy of the articles of incorporation; if a municipality, a showing of (1) the law or charter and procedure taken by which it became and exists a legal body corporate, (2) that the taking of a permit or lease is authorized under such law or charter, and (3) that the action proposed has been duly authorized by the governing body of such municipality; and the applicant must make affidavit that he or it is not disqualified to take a permit or lease under the provisions of section 27 of the Act. Corporations must also submit a showing as to the residence and citizenship of its stockholders.

(c) Description of the land, by legal subdivisions if surveyed, or if not surveyed, by metes and bounds or natural monuments, with such particularity as to render possible its identification with certainty. Where possible, description of the land by the approximate subdivisions of the future survey should be given.

(d) Statement of the general situation of the land with respect to other mines, its topography, outlet to market, and transportation facilities.

(e) Character and extent of the coal deposits so far as known.

(f) The contemplated investment for the development and equipment of a producing mine of a stated average daily output.

(g) Maximum royalty petitioner is willing to pay if awarded

lease of the land described in petition, or any specific portion thereof, together with a statement by or on behalf of petitioner that, in the absence of any better bid for lease of said land, he will, within thirty days from auction of lease, execute a lease therefor and comply with its terms in good faith.

10. *Action by local office.*—Registers and receivers will assign current serial numbers to such petitions, promptly note the petitions on their records, and transmit them to the General Land Office with report of the record status of the land described.

After receipt of such a petition, no filing for any of the land described therein will be accepted until so directed, except other petitions for dividing into leasing units.

11. *Action on petition.*—If the terms offered by the petitioner for lease of the land or deposits are considered tentatively acceptable as minimum terms for such land or deposits, examination, classification, and blocking the land into leasing unit or units will be directed. If it be found thereby that the land desired by the petitioner constitutes a suitable unit, and the terms offered by him are considered acceptable therefor, the land or deposits will be advertised for lease to the bidder offering the highest bonus for such lease on the same terms. But, if it be found as a result of such examination and blocking out, that the land does not constitute an acceptable leasing unit, or if the royalty offered, or investment contemplated, is considered inadequate, the petitioner will be so advised, and also of the form and area in which the land or deposits will be leased and the minimum terms on the basis of which lease will be offered for sale, whereupon the petitioner will be permitted to amend his offer to meet the terms required. If the offer is so amended, the leasing units will be advertised for lease to the bidder offering the highest bonus for such lease; but if no bidder offers a bonus for such lease, same will be awarded to the petitioner. In case the petitioner fails to make a satisfactory minimum lease offer, the leasing unit may or may not be offered for lease, in the discretion of the Secretary of the Interior.

12. *Notice of offer.*—When any coal lands are divided into leasing tracts, the appropriate District Land Office will be advised thereof whereupon the register will publish a notice for a

period of thirty days in a newspaper of general circulation in the county in which the lands or deposits are situated, of the offer of the land for lease, and the date and hour on which bids will be received at his office, such date to be not earlier than the last day of publication. The notice will describe the land, state the amount of royalty and rental to be charged, and the minimum investment required, and that the sale of lease will be made at public auction at the time fixed to the qualified bidder offering the highest bonus for the privilege of leasing the land on the terms set forth. A copy of the notice will also be posted in the Land Office during publication thereof. Publication of the offer will be at the expense of the government.

All bidders at any public sale of leases are warned against committing any act by intimidation, combination or unfair management, to hinder or prevent bidding thereat, in violation of section ¹ 59 of the Criminal Code of the United States, approved March 4, 1909.

13. *Auction of lease.*—At the time fixed in the notice, the register or receiver will, by public auction at his office, offer the land or deposits for lease on the terms and conditions fixed in the notice to the qualified bidder of the highest amount offered as a bonus for the privilege of leasing the land, subject to the approval of the Secretary of the Interior. The successful bidder must deposit with the receiver on the day of sale a certified check or cash, for one-fifth of the amount of his bid, such sum to be deposited by the receiver in his account "Trust funds—Unearned money."

14. *Right to reject bids.*—The right is reserved by the Secretary of the Interior to reject any and all bids; and should a bid be rejected, the deposit made by the bidder will be returned.

15. *Action by bidder.*—The successful bidder will be allowed thirty days from date of auction within which (a) to file in the District Land Office a lease, duly executed by him in triplicate in the form herein prescribed (par. 18); (b) to file evidence of qualifications as prescribed by paragraph 9 (b) hereof, unless such evidence has theretofore been filed; (c) to file the bond required by section 2 (b) of the lease, or U. S. bonds in lieu

¹ R. S. Sec. 2373. Comp. L. Sec. 10226.

M. O. R.—30.

thereof under the Act of February 24, 1919 (40 Stat., 1148); (d) to pay the remainder of the bonus bid by him and the annual rental for the first year of the lease, together with the required filing fee of \$2 for each 160 acres of land, or fraction thereof, but in no case less than \$10.

16. *Action by district officers.*—At the end of the thirty days allowed the successful bidder, or sooner, if the foregoing be complied with by him, the local officers will forward by special letter all papers with full report of action taken. In case of default, the amount deposited by the bidder will be forfeited, and disposed of as other receipts under this Act.

17. *Modifications of leases.*—Under section 3 of the Act, where a lease has been issued, modifications may be secured to include therein additional contiguous coal lands or coal deposits, not exceeding a total of 2,560 acres in the lease. Under section 4 of the Act, upon satisfactory showing by the lessee that all of the workable coal within a tract covered by the lease will be exhausted, worked out, or removed within three years thereafter, additional tracts may be leased, which, including the lands or deposits remaining in the lease, shall not exceed 2,560 acres, such lease of additional lands to be made under similar procedure and on the same conditions as original leases.

18. *Form of lease.*—Leases hereunder will be in substance as follows:

U. S. Land Office at.....
Serial No.....

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR.

MINING LEASE OF COAL LANDS UNDER ACT OF FEBRUARY 25, 1920.

Date. Parties.

This indenture of lease, entered into, in triplicate, this day of, A. D. 19...., by and between the United States of America, acting in this behalf by Secretary

of the Interior, party of the first part, hereinafter called the lessor, and of party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the Act of Congress, approved February 25, 1920 (41 Stat. —), entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," hereinafter called the "Act."

Purposes. Description of Land. Mining and Surface Rights.

WITNESSETH:

That the lessor, in consideration of the rents and royalties to be paid and the covenants to be observed as hereinafter set forth, does hereby grant and lease to the lessee the exclusive right and privilege to mine and dispose of all the coal in, upon, or under the following-described tracts of land, situate in the State of, to wit:, containing acres, more or less, together with the right to construct all such works, buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the coal for market, the manufacture of coke or other products of coal, the housing and welfare of employees, and subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted.

Rights Reserved by Lessor. Easements.

SECTION 1. That the lessor expressly reserves:

(1 a) The right to permit for joint or several use such easements or rights of way, including easements in tunnels upon, through, or in the land leased, occupied, or used as may be necessary or appropriate to the working of the same or other lands containing the deposits described in said Act, and the treatment and shipment of the products thereof by or under authority of the government, its lessees or permittees, and for other public purposes.

Disposition of Surface.

(1 b) The right to lease, sell, or otherwise dispose of the surface of said lands or any part thereof under existing law or laws hereafter enacted, in so far as said surface is not necessary for the use of the lessee in the mining and removal of the coal therein, and to lease other mineral deposits in the lands, under the provisions of said act.

Monopoly and Fair Prices.

(1 c) Full power and authority to carry out and enforce all the provisions of section 30 of said Act to insure the sale of the production of said leased lands to the United States and to the public at reasonable prices, to prevent monopoly; and to safeguard the public welfare.

SEC. 2. The lessee in consideration of the lease of the rights and privileges aforesaid hereby covenants and agrees as follows:

Investment.

(2 a) To invest in actual mining operations, development, or improvements upon the land leased, or for the benefit thereof, the sum of dollars, of which sum not less than one-third shall be so expended during the first year succeeding the execution of this instrument and a like sum each of the two succeeding years, unless sooner expended; and submit annually, at the expiration of each year for the said period, an itemized statement of the amount and character of said expenditure during such year.

Bond.

(2 b) To furnish a bond in the sum of \$10,000, conditioned upon the expenditure of the amount specified in (2 a) hereof, and after said investment has been made, a similar bond in the sum of \$5,000, conditioned upon compliance with the terms and provisions of this lease.

Annual Rental.

(2 c) To pay as an annual rental for each acre or part thereof covered by this lease the sum of 25 cents per acre for the first year, payment of which amount is hereby acknowledged, the sum of 50 cents per acre per year for the second, third, fourth, and fifth years, and \$1 per acre for the sixth and each succeeding year during the life of this lease, all such annual payments of rental to be made to the receiver of the United States Land Office of the district in which said land is situated, on the anniversary of the date hereof, and to be credited on the first royalties to become due hereunder during the year for which said rental was paid.

Royalty.

(2 d) To pay to such receiver a royalty of cents on every ton of 2,000 pounds of coal mined during the first twenty years succeeding the execution of this lease. Royalties shall be payable quarterly within thirty days from the expiration of the quarter in which the coal is mined.

Record of Coal Mined.

(2 e) To determine accurately the weight of all coal mined from the leased premises, and to accurately enter the weight or weights thereof in due form in books to be kept and preserved by the lessee for such purpose.

Quarterly Reports.

(2 f) To furnish quarterly, within thirty days after the expiration of the quarter, a written report covering such quarter, certified under oath by the superintendent of the mine, or by such other agent having personal knowledge of the facts as may be designated by the lessee for such purpose, showing the number of tons of 2,000 pounds of coal mined during the quarter, the character and quality thereof, amount of coal and products and by-products thereof disposed of and price received therefor,

amount of coal and its products in storage or held for sale, and amount used in operations under this lease.

Annual Reports.

(2 g) Also to furnish annually, and at such other times as the Secretary of the Interior may require, in the manner and form prescribed by the Secretary of the Interior, plat, map, or tracings showing all development work and improvements upon the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon the leased lands, a statement as to the amount and grade of coal produced and sold, and amount received therefor by operations hereunder, and, if a corporation, the amount of capital stock and list of its stockholders.

Mine Maps.

(2 h) to keep at the mine office clear, accurate, and detailed maps, on a scale not more than 200 feet to the inch, in the form of horizontal projections on tracing cloth, of the workings in each coal bed in each separate mine on the leased lands, a separate map to be made for each such bed, and for the surface immediately over the underground workings, and to be so arranged with reference to a public land corner that the maps can be readily superimposed.

Detailed Map of Workings.

Each map of the workings in any coal bed shall show the thickness of the coal and of partings, and the dip and strike of each bed at intervals of 500 feet or less; the location of all openings connecting such bed with the workings in any other bed, or with any adjacent mine, or with the surface; the location of all entries, gangways, rooms, or breasts, and all other mine openings, shafts, airways, appliances, and devices, constructed or placed in the mine or any of the workings thereof; and such maps shall also show the elevation relative to sea level or a government survey corner of the principal points of the various beds and workings.

Progress Maps.

Blueprints or reproductions in duplicate of the maps required as aforesaid shall be furnished the lessor when made, and supplemental prints or reproductions in duplicate furnished on or before the first day of each succeeding year, showing the extensions, additions, and changes since the last map or supplement was submitted. All mine progress maps kept by the lessee shall at all times be subject to examination by lessor.

Royalty on Minimum Production.

(2 i) That, beginning with the fourth year of the lease, except when such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, the lessee shall mine and pay a royalty on not less than tons of coal per year, unless on application and showing made, operations shall be suspended for not exceeding six months at any one time, pursuant to section 7 of the Act; or unless the lessee shall pay the royalty less rent, on such minimum amount of coal, for one year in advance, in which case operations may be suspended for that year.

Assignment of Lease.

(2 j) That the lessee shall not assign this lease or any interest therein, nor sublet any portion of the leased premises without the written consent of the lessor being first had and obtained.

Readjustment of Terms.

SEC. 3. It is mutually understood and agreed that the lessor shall have the right to readjust and fix the royalties payable hereunder and other terms and conditions at the end of twenty years from the date hereof, and thereafter at the end of each succeeding twenty-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period, but in case the lessee be dissatisfied with the rate of royalty or other terms and conditions so fixed, he may

terminate this lease in the manner and under the conditions provided in sections 6 (b) and 6 (c) hereof.

SEC. 4. This lease is made subject to the following provisions, which the lessee accepts and covenants faithfully to perform and observe, unless the laws of the State where the leased land or deposits are situated otherwise provide, in which case such State laws control:

Operating Regulations.

(4 a) The lessee shall carry out and observe regulations prescribed by the Secretary of the Interior and in force at the date hereof relative to (1) reasonable diligence, skill, and care in the operation of said property in accordance with approved methods and practices; (2) the prevention of undue waste; (3) the safety and welfare of miners; and (4) insuring the fair and just weighing or measurement of the coal mined by each miner.

Payment of Wages. Freedom of Purchase. Eight-hour Work-day.

(4 b) And also shall pay all miners and other employees, both above and below ground, at least twice each month in lawful money of the United States, and shall permit such miners and other employees full and complete freedom of purchase, but with a view to increasing safety this provision shall not apply to the purchase of explosives, detonators, or fuses; and shall not require or permit miners or other employees, except in case of emergency, to work underground for more than eight hours in any one workday, and shall not employ any boy under the age of sixteen years, or any girl or woman without regard to age in any mine below the surface.

Inspection.

SEC. 5. And the lessee also expressly agrees that all mining and related operations shall be subject to the inspection of authorized representatives of the lessor, and that such representatives, with all proper and necessary assistants, may at all reasonable times enter into and upon the leased lands and survey and

examine same and all surface and underground improvements, works, machinery, equipment, and operations.

Examination of Books and Records.

(5 a) And also shall permit the lessor to examine all books and records pertaining to operations under this lease, and to make copies of and extracts from any or all of same, if desired.

Operations on Adjoining Lands.

(5 b) And also shall permit the lessor or its lessees or transferees, with the approval of the lessor, to make and use upon or under the leased lands any workings necessary for freeing any other mine from water or gas, or extinguishing fires, causing as little damage or interference as possible to or with the mine or mining operations of the lessee hereunder; provided, that any such use by a transferee or other lessee shall be conditioned upon the payment to the lessee hereunder of the amount of actual damages sustained thereby and adequate compensation for such use.

Result of Forfeiture.

(5 c) And also shall, at the termination of this lease, as the result of forfeiture thereof, pursuant to paragraph (6 d), deliver up to the lessor the lands covered thereby, including all fixtures, machinery, improvements, and appurtenances, other than strictly personal property, situate on any of said lands, in good order and condition, so as to permit of immediate continued operation to the full extent and capacity of the leased premises.

SEC. 6. It is further mutually understood and agreed as follows:

Waiver of Conditions.

(6 a) That the lessor may, in writing, waive any breach of the covenants and conditions contained herein, except such as are required by the Act, but any such waiver shall extend only to the particular breach so waived, and shall not limit the rights

of the lessor with respect to any future breach; nor shall the waiver of a particular cause of forfeiture prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Surrender of Lease.

(6 b) The lessee may, on consent of the Secretary of the Interior first had and obtained, surrender and terminate this lease upon payment of all rents, royalties, and other debts due and payable to the lessor and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary of the Interior that the public interest will not be impaired; and the lessee may with like consent surrender any legal subdivision of the area included within the lease; but in no case shall such termination be effective until the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered hereby.

Privilege of Purchasing Equipment.

(6 c) That on the termination of this lease, pursuant to the last preceding paragraph, the lessor, his agent, licensee, or lessee shall have the exclusive right, at the lessor's election, to purchase at any time within six months, at the appraised value thereof, all buildings, machinery, equipment, and tools, placed by the lessee in or on the land leased hereunder, save and except all underground timbering, and such other supports and structures as are necessary for the preservation of the mine, which shall be and remain a part of the realty without further consideration or compensation; that the purchase price to be paid for said buildings, machinery, equipment, and tools to be purchased as aforesaid, shall be fixed by appraisal of three disinterested and competent persons (one to be designated by each party thereto and the third by the two so designated), the valuation of the three or a majority of them to be conclusive; that pending such election to purchase within said period of six months none of said buildings or other property shall be

removed from their normal position; that if such valuation be not requested, or the lessor shall affirmatively elect not to purchase within said period of six months, the lessee shall have the privilege of removing said buildings and other property, except said timbering and other supports and structures, as are necessary for the preservation of the mine, as aforesaid.

Forfeiture.

(6 d) If the lessee shall fail to comply with the provisions of the Act or make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or of the general regulations promulgated and in force at date hereof, the lessor may institute appropriate proceedings in a Court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 31 of the Act, but this provision shall not be construed as depriving the lessor of any legal or equitable remedy which the lessor might otherwise have.

Action by Lessor to Prevent Loss or Damage.

SEC. 7. It is further covenanted and agreed that, should the lessee fail to take prompt and necessary steps to prevent loss or damage to the mine, property, or premises, or danger to the employees, the lessor may enter on the premises and take such measures as may be deemed necessary to prevent such loss or damage or to correct the dangerous or unsafe condition of the mine or works thereof, which shall be at the expense of lessee.

Continuing Obligation.

SEC. 8. It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Unlawful Interest.

SEC. 9. It is also further agreed that no member of or delegate to Congress, or resident commissioner, after his election or appointment, or either before or after he has qualified, and during

his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part in this lease, or derive any benefit that may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the United States and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts enter into and form a part of this lease so far as the same may be applicable.

In witness whereof—

THE UNITED STATES OF AMERICA,
By.....
Secretary of the Interior, Lessor.
.....
.....
Lessee.

Witnesses.

.....
.....
.....
.....

II. Coal Prospecting Permits.

19. *Character of lands.*—Permits are authorized by section 2 of the Act to be issued to qualified applicants to prospect unclaimed undeveloped lands where prospecting or exploratory work is necessary to determine the existence or workability of the coal deposits.

20. *Area.*—Permits will be issued for tracts of not exceeding 2,560 acres of contiguous lands, or, if not contiguous, in reasonably compact form, considering the reasons for not including a contiguous area. Where lands included in a permit have been or may be disposed of with reservation of the coal deposits, a permittee must make full compliance with the law under which such reservation was made, reference being made to the Acts of March 3, 1909 (35 Stat. 844); June 22, 1910 (36 Stat. 583); December 29, 1916 (39 Stat. 862), and other laws authorizing such reservations.

21. *Rights conferred.*—A permit will entitled the permittee to the exclusive right to prospect for coal on the land described

therein. In the exercise of this right, the permittee shall be authorized to remove from the premises only such coal as may be necessary in order to determine the workability and commercial value of the coal deposits in the land.

22. *Application for permit.*—Applications for permits shall be filed in the proper District Land Office, and, after due notation thereof on the record, forwarded to the General Land Office with report of status of the land affected. No specific form of application is required and no blanks will be furnished, but it should cover, in substance, the following points:

- (a) Applicant's name and address;
- (b) Proof of citizenship and qualifications to take a lease as required by paragraph 9 (b) hereof;
- (c) Description of land for which a permit is desired by legal subdivision if surveyed, and by metes and bounds and such other description as will identify the land if unsurveyed. If unsurveyed, a survey sufficient to identify more fully and segregate the land may be required before permit is granted;
- (d) Condition of coal occurrences, so far as determined; description of workings, and outcrops of coal beds, if any, and reason why the land is believed to offer a favorable field for prospecting for coal;
- (e) Detailed plan and method of conducting prospecting or exploratory operations on the land, estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted;
- (f) Brief statement of applicant's experience in coal mining operations, if any, together with one or more references as to his reputation and business standing.

The application must be under oath of the applicant, or if a corporation, of one of its officers theretofore duly authorized.

23. *Form of permit.*—On receipt of the application, if found sufficient and the lands subject thereto, a permit will be issued, of which the District Land Office will be advised. Permits will be in substantially the following form:

U. S. Land Office.....
Serial No.....

The United States of America,
Department of the Interior.

COAL PROSPECTING PERMIT.

Know all men by these presents, that the Secretary of the Interior, under and by virtue of the Act of Congress entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain, approved February 25, 1920 (Public No. —), has granted and does hereby grant a permit to of the exclusive right for a period of two years from date hereof to prospect for coal the following described lands: but for no other purpose, under the provisions of said Act and upon the following express conditions, to wit:

1. To begin prospecting work within ninety days from date hereof and to diligently prosecute the same during the period of such permit in accordance with the following plan:.....

2. To remove from said premises only such coal or other material as may be necessary to prospecting work, and to keep a record of all coal mined and disposed of, payment of a royalty thereon of 25 cents per ton of 2,000 pounds to be made to the receiver of the district land office not later than during the calendar month succeeding that during which such coal was disposed of.

3. To afford all facilities for inspection of the prospecting work on behalf of the Secretary of the Interior, and to make report on demand of all matters pertaining to the character, progress, and results of such work.

4. To observe such conditions as to the use and occupancy of the surface of the land as provided by law, in case any of said lands shall have been or may be entered or patented with a reservation of the coal deposits to the United States.

Expressly reserving to the Secretary of the Interior the right to permit for joint or several use such easements or rights of way upon, through or in the land embraced herein as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in said Act, and the treatment and shipment of the products thereof by or under authority of the government, its lessees, or permittees, and for other public purposes; also reserving to the United States the right to

lease, sell or otherwise dispose of the surface of said lands under existing law or laws hereafter enacted in so far as said surface is not necessary for the use of the permittee in prospecting hereunder, and *further reserving* the right and authority to cancel this instrument for failure of the permittee to comply with any of the conditions hereof, after thirty days' notice of the reasons for such cancellation.

Valid existing rights acquired prior hereto on the lands described herein will not be adversely affected hereby.

Dated this day of 19....

.....

Secretary of the Interior.

24. *Leases to permittees.*—A qualified permittee who has shown, within the period of the permit, that the land included therein contains coal in commercial quantities, will be entitled to a lease for such land, or part thereof as the permittee may desire, upon due application and publication of notice thereof. The application for lease should be filed in the proper district Land Office before the expiration of the period of the permit. An application for lease under this section should describe the land desired, and set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit. Such leases will be granted without competitive bidding, on rents and royalties to be fixed by the Secretary of the Interior, and otherwise substantially in the form of lease provided in section 18 of these regulations.

III. Limited License to Mine Coal.

Under section 8 of the Act, the Secretary of the Interior is authorized to issue limited licenses to individuals and associations of individuals to mine and take coal for their own use, but not for sale, without the payment of any rent or royalty, and such licenses may be issued to municipalities to mine and dispose of coal without profit to their residents "for household use." Attention is called to the fact that, under this section, an individual or association of individuals may mine and take coal under such a license for his or their own strictly local domestic

needs for fuel, whatever such use may be, but in no case for barter or sale; while a municipality may under such a license supply coal to its residents for household use only, which excludes mining coal by a municipality either for its own use or use of its residents other than for household purposes, thus barring factories, stores, heating and lighting plants and other business establishments.

25. *Area and duration.*—(a) A license to an individual or association, in the absence of unusual conditions or necessity, will be limited as to area to a legal subdivision of 40 acres or less; and may be revoked at any time, and such license will expire by limitation at the end of two years from date of issuance, unless timely renewed on application filed and proper showing made prior to expiration of the two-year period.

(b) Licenses to municipalities are limited as to area by the provisions of the Act, as follows: Not to exceed 320 acres for a municipality of less than 100,000 population, not to exceed 1,280 for a municipality of not less than 100,000 and not more than 150,000 population, and not to exceed 2,560 acres for a municipality of 150,000 population or more. Licenses to municipalities will expire by limitation at the end of four years from date of issuance, unless renewed; but every such licensee must make to the Commissioner of the General Land Office an annual report of all operations conducted under such license.

26. *Application for license.*—Application for such limited license must be filed in duplicate in the district land office having jurisdiction over the land, in the form herein provided. A municipality must file with the application a showing of (1) the law or charter and procedure taken by which it became and exists a legal body corporate, (2) that the taking of a license is authorized under such law or charter, and (3) that the proposed action has been duly authorized by the governing body of the municipality. Appropriate serial number will be assigned to such application, notation made thereof on the office records, and the application promptly forwarded to the General Land Office with report of status of the lands.

27. *Form of application—License.*—An application in substantially the following form, approved by the Secretary of the

Interior, will constitute the license; one copy will be retained for the Land Office records and the other returned to the licensee. Blank forms of applications will be printed and available in the district land offices.

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR.

U. S. Land Office at.....

Serial No.....

APPLICATION FOR LICENSE TO MINE COAL UNDER
SECTION 8 OF THE ACT OF FEBRUARY 25, 1920.

.....
..... 19....,

THE COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

SIR: The undersigned of, hereby appl for a license to prospect for, mine, and remove coal from the following described land containing approximately acres, situated within the land district, State of, and in support of this application make the following representations as to qualifications to receive a license

The purpose for which the coal mined hereunder is to be used is for which approximately tons are required annually.

In consideration of the granting of the license applied for, the applicant hereby agrees to the following express terms and conditions, to wit:

1. That only so much of the surface of the land as may be necessary to prospecting and mining operations hereunder shall be used or occupied by said licensee, and the right is reserved by the Secretary of the Interior to dispose of any portion of said land not already disposed of with reservation of the coal deposits under the Act of June 22, 1910 (36 Stat. 583), or other Acts authorizing such disposition, such licensee to observe in prospecting and mining operations hereunder all provisions of

the laws under which any part of the land has been or may hereafter be disposed of with reservation of the coal deposits therein.

2. That all prospecting, mining and removal of coal hereunder shall be conducted in accordance with approved methods and practice, considering the extent of the operation; that no underground working shall be abandoned until all the available coal is taken therefrom; that due provision shall be made for the prevention of fires in the mine or mines opened hereunder and for the safety of the miners or other workmen engaged therein, and reasonable diligence, skill, and care shall be exercised in all mining operations hereunder; and shall carry out and observe any regulations prescribed by the Secretary of the Interior, and in force at the date hereof, relative to the foregoing provisions in this paragraph; and on termination the licensee to leave the premises in a safe condition for future mining operations.

3. That the license is granted for a period of years from the date hereof, subject to an extension at the end of such period for a like term of years upon application for such extension and satisfactory showing as to the mining of coal from the land, giving the amount of coal mined, the disposition made thereof, the condition of the mine, and the amount of coal remaining in the land which can be mined.

4. That the right is reserved to cancel and recall this license at any time, after thirty days' notice of such purpose, for failure to mine and use the coal deposits in accordance with the conditions and provisions of said Act, or for committing waste or other unnecessary damage to the land or the deposits therein, for abandonment or nonuse or for other violation of the terms of this license; that in case this license is canceled prior to its expiration, or expires by limitation, all mining machinery, tools and appliances placed thereon by said licensee shall be removed within sixty days from date of expiration of notice of such cancellation; otherwise, said machinery, tools, and appliances to become the property of the United States: *Provided*, That no underground support or structure necessary for the preservation of the mine shall be removed.

5. That the right is reserved to the Secretary of the Interior to permit, upon such terms as he may determine to be just, for

joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in said lands as may be necessary or appropriate to the working of the same, or of other lands containing coal, or other deposits described in said Act, and the treatment and shipment of the products thereof by or under authority of the United States, its lessees, or permittees, and for other public purposes; also the right to dispose of the land, or any deposits therein, under laws authorizing such disposition with reservation of the coal deposits to the United States and the right to prospect for, mine, and remove the same.

6. That said permittee, if a municipality, shall submit to the Secretary of the Interior annually on the anniversary of the date hereof a complete and detailed report of operations under the permit, together with a map or maps showing the mine workings, giving character and dimensions of underground work performed, buildings and structures erected, and machinery installed during the year, size of the coal vein mined and its dip and strike, character of the coal, amount of coal mined, amount on hand or in stock and where stored, number of miners employed, total amount of wages paid miners and other employees, number of other employees, total salaries paid, cost of supplies and other operating expenses, amount of coal and its products sold and amount received therefor, giving a full statement of the operations under the permit.

.....
 Subscribed and sworn to by this, day of
, 19.....

.....
 [Signature of applicant.]

Approved:

.....,
Secretary of the Interior.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved April 1, 1920.

JOHN BARTON PAYNE,
Secretary of the Interior.

Petition for Coal Permit.

Under regulation 22, concerning coal lands, applications for permits are to be filed in the district land office. No specific form is required, but the regulation specifies what points shall be covered, and refers to paragraph 9 (b) as to proof of citizenship, and qualifications to take a lease. Paragraph 9 (b) provides that the applicant must make affidavit that he is not disqualified to take a permit or lease under the terms of section 27 of the act, and that corporations must show the residence and citizenship of its stockholders. Section 27 limits the holding of more than one coal lease in any one State and limits the rights of individuals and corporations to hold stock in other corporations which hold leases. An affidavit should therefore accompany the petition for a permit in which should be stated the facts peculiar to each application. The form of the petition should be substantially as follows:—

PETITION FOR COAL PERMIT.

To the Hon. the Commissioner of the General Land Office:

Your petitioner, The Carbon County Coal and Oil Co., respectfully represents.

1. That your petitioner is a corporation organized under the laws of the State of Wyoming, qualified under its Articles to lease coal land and to open mines for coal and to ship and sell the product of its mines. A duly certified copy of its Articles of Incorporation is herewith enclosed marked Exhibit A.

2. The undersigned Patrick W. Coreoran, President of said Company is authorized to make this application and his P. O. address and the P. O. address of said Company is Walcott, Wyoming, and a resolution of the Board of Directors authorizing him to make, verify and present this petition is herewith enclosed marked Exhibit B.

 If a Permit is desired consists of 160 acres
 quarter of Section 7, Township 14 South,
 5th Principal Meridian, in Carbon County,
 160 acres.

 If coal occurrences so far as determined

on the premises is that there is ocular evidence of the existence of a bed of bituminous coal about 9 feet thick showing an outcrop at three or more points within said quarter section. The only workings are three pits on the outcrop each about four or five feet deep exposing the top of the vein, the distance between the furthest east and the furthest west pit being about 500 feet which indicates the continuity of the vein. Coal also has been found on the supposed extension of said vein on the adjoining quarter section to the east with surface indications of coal on the two quarter sections lying west from the quarter section above described.

5. The detailed plan and method of conducting prospecting or exploratory operations on the land is by sinking each of the said pits deeper so as to more fully define the outcrop and width of the vein and to sink an incline or shaft at some point where the vein may be plainly disclosed, convenient for working and shipping. The cost of carrying out the prospecting operations should not exceed \$300, which sum the Company has in the bank in said Town of Walcott subject to its check and the petitioner expects to proceed continuously with all diligence to complete the prospecting as soon as the permit is granted.

6. The petitioner has never mined for coal but its President has had three years experience in actual coal mining and several of its officers and stockholders are practical coal miners and for references your petitioner gives the Bank of Walcott, its President and cashier and the International Trust Co. of Denver.

Respectfully submitted,

Carbon County Coal and Oil Company.

By Patrick W. Corcoran,
President.

Attest:

Edwin Lange,
Secretary.

STATE OF WYOMING, }
COUNTY OF CARBON. } ss.

Patrick W. Corcoran, being first duly sworn saith, that he is President of the above named Carbon County Coal and Oil

Company and that he has read the foregoing petition and knows the contents thereof and that the same and the matters and things therein stated are true of his own knowledge.

Patrick W. Corcoran.

Sworn and subscribed before me this

..... day of A. D. 19...

My Commission expires

.....

Notary Public.

EXHIBIT B.

Copy of Corporate Resolution.

Resolved that Patrick W. Corcoran, President of the Carbon County Coal and Oil Company, is hereby authorized to apply to the proper department of the Land Office of the United States for coal prospecting permit on the Southwest Quarter of Section 7, Township 14 South, Range 60 West of the 6th Principal Meridian, Carbon County, Wyoming and to make, sign and verify all papers required by the Department in aid of such application or petition and to receipt for the permit when issued and to do all things and sign all papers requested in the premises by any Department of the Land Office.

On motion made and seconded the above resolution was adopted by unanimous vote and the Secretary is directed to certify this resolution and its passage when and as he may be lawfully required.

Secretary's Certificate.

The subscriber, Edwin Lange, Secretary of the above named company, hereby certifies that the above is a true and correct transcript from the minutes of a meeting of the Board of Directors of said Company, held at the office of said Company at Walcott, Wyoming on the first day of May 1921, duly called under its by-laws, at which a quorum of Directors were present,

and that such Resolution has never been revoked or otherwise quaified.

WITNESS my official signature and the Corporate Seal of said Company this day of A. D. 1921.

Edwin Lange,
Secretary.

The form of the permit to be issued upon the foregoing application is printed in regulation 23, page 478.

Under the Stock Raising Act 39 Stat. L. 862, 40 Stat. L. 1016, Comp. L. secs. 4587A-4587K, the coal and other minerals are reserved to the United States. Circular, 47 L. D. 227.

The Coal Lands Laws in force July 16, 1918, are printed in the compiled laws section 4665-4670.

Section 4665 provides for patent to coal lands reserving the coal.

Section 4665A provides for the release of such reservation where the land has been later classified as non-coal.

Sections 4666-4668 provide for agricultural entries on Coal Lands reserving the coal to the United States, under The Homestead Law, The Desert Land Law, The Carey Act and The Reclamation Act, excepting Alaska.

Section 4668A covers Coal Land in Indian Reservations excepting the Five Tribes in Oklahoma.

Section 4669 provides for selection by the States of isolated or disconnected Coal Tracts reserving the coal.

Section 4670 is confined specially to Alabama.

CHAPTER 80.

FORMS OF OIL AND GAS LEASES.

THE CARTER OIL COMPANY FORM.

INDENTURE, made this day of 19, between postoffice party or parties of the first part, designated herein as "lessor," and THE CARTER OIL COMPANY, a corporation of the State of West Virginia, with an office at Tulsa, Oklahoma, party of the second part, designated herein as "lessee;"

WITNESSETH: That the lessor, for and in consideration of the sum of Dollars, in hand paid by the lessee, receipt of which is hereby acknowledged, and the covenants and agreements herein contained on the part of the lessee to be paid, kept and performed, has demised, leased and let, and by these presents does demise, lease and let unto the said lessee, its successors and assigns, exclusively, for the sole and only purpose of operating for and producing oil and gas thereon and therefrom. Together with rights of way, easements and servitudes for pipelines, telephone and telegraph lines, for tanks, powerhouses, stations, gasoline plant, and fixtures for producing, treating and caring for such products, and housing and boarding employees, and any and all rights and privileges necessary, incident to or convenient for the economical operation of said land alone or conjointly with neighboring lands, for oil and gas, with right for such purposes to the free use of oil, gas or water from said lands (but not from lessor's water wells) and wood and timber therefrom for fuel in conducting drilling operations thereon, and with the right of removing, either during or after the term hereof, all and any property and improvements placed or erected on the premises by the lessee, including the right to pull all casing, said land being situated in the County of State of and more particularly described as follows:

..... (Description)

To Have and to Hold all and singular the rights and privileges granted hereunder, to and unto the lessee, its successors and assigns, for the term of ten years from date hereof, and as much longer thereafter as oil or gas shall be produced therefrom, or royalties paid hereunder, or as much longer thereafter as the lessee in good faith shall conduct drilling operations thereon, and should production result from such operations, this lease shall remain in force as long as oil or gas shall be produced. Lessor hereby releases and waives all rights of homestead, curtesy or dower, and warrants to the lessee, its successors and assigns, for the full term hereof, the title and possession of said land for all purposes herein set forth.

In consideration of the premises the lessee covenants and agrees:

First: To deliver to the credit of the lessor as royalty, free of cost, in the pipe line to which it may connect its wells, the equal one-eighth part of all oil produced and saved from the leased premises, or at lessee's election, to pay the lessor for such royalty the market price prevailing the day the oil is run into the pipe line or storage tanks, in which event settlement and payment shall be made by the lessee on the 15th day of each month for the royalty so purchased during the preceding month.

Second: To pay the lessor \$250.00 each year in advance for the gas from each well where gas only shall be found when the same is used off the premises; the lessor, at his sole risk at all times, to have gas free of cost from any such well for two stoves and all inside lights in the principal dwelling house on said land by making his own connection with the well: Provided, should this free gas be required to operate said lease, lessor's use thereof at the election of the lessee may be discontinued. If casing-head gas produced from said land is sold by the lessee, the lessee shall pay the lessor as royalty one-eighth of the net proceeds of said sales; if the lessee manufactures gasoline from said casing-head gas, then all oils and other materials used to blend said gasoline shall be deducted from the quantity of gasoline marketed, and the quantity remaining shall constitute the basis for the payment of royalty. The lessee shall pay the lessor a one-eighth

royalty on said quantity remaining at the net price obtained by the lessee for the marketed product. All casing-head gas royalties shall be paid on or before the 25th day of each month for royalties accruing during the preceding month.

Third: If no well is commenced on said land on or before the day of, 19....., this lease shall terminate as to both parties unless the lessee on or before that date shall pay or tender the lessor the sum of Dollars (\$.....) in the manner hereinafter provided; which payment or tender shall operate as a rental for twelve months from and after the date last above stated, and the same shall also cover the right and privilege in the lessee to defer the commencing of said well during said period of twelve months. In like manner and upon like payments or tenders the commencement of a well may be further deferred for like periods of twelve months each successively, during the original term of this lease, and the original term hereof is the number of years fixed in the habendum clause hereof. *Provided*, the lessee or the assignee of the whole or any part hereof shall have the right to extend this lease as to part of the land covered hereby only upon paying such proportion of the periodical rental provided for above as the acreage to be retained by the lessees or assignee bears to the entire acreage covered by this lease. Lessor expressly declares that the down-payment or bonus received by him for this lease at the time of the execution thereof is a good, valid and substantial consideration, and sufficient in all respects to support each and every covenant contained therein, including specifically the option granted the lessee to extend this lease from time to time during its original term as defined above upon the payment or tender of the rentals hereinbefore provided for. Lessee agrees with reasonable diligence to offset all paying oil or gas wells drilled within 300 feet of the tract covered hereby, and it is expressly agreed that no implied covenants regarding the measure of diligence to be exercised by the lessee in the drilling of said land during said original term shall be read into this lease, it being the express agreement of the parties that the provisions of this paragraph specify the exclusive conditions for drilling under which the lessee shall hold this lease for said original term.

Fourth: All payments due hereunder shall be made by lessee's check mailed, postage prepaid, on or before the day such payment is due, to lessor at the above postoffice address, or to Bank of for deposit to lessor's credit, and the lessor, effective for the full term of this lease, hereby makes and constitutes said bank or its successors his agent to accept all payments due hereunder, and the same shall continue as the depository thereof during the life of this lease, regardless of changes in the ownership of said land, rentals or royalties. No change in the ownership of said land, rentals or royalties shall affect or bind the lessee until the purchaser thereof shall exhibit to the lessee the original instrument of conveyance, or furnish a duly certified copy thereof; such evidence of ownership must be supplied at least sixty days before the next succeeding rental falls due, otherwise payment of rentals to the purchaser's predecessor in title shall bind such purchaser: Provided, if such purchase covers a part of the acreage herein described only, or an undivided interest therein, then the lessee at its election may continue to pay the entire rental or royalty to the purchaser's predecessor in title. Should suit be brought involving the ownership of rentals or royalties accruing hereunder, or the validity of this lease, or to foreclose a lien or charge against the fee to said land, or said rentals or royalties, then all payments accruing hereunder shall be suspended until the final determination of such suit: Provided, also, if said land now is or hereafter becomes subject to delinquent taxes, liens of whatsoever nature, or other charge which, if unpaid, might defeat lessee's title under this lease, the lessee at its election may pay the same with all costs and penalties connected therewith, and for money so expended shall have a lien on said land, or the lessee at its election may deduct such expenditure from any rental or royalties due hereunder. Should the lessee drill a dry hole on said land, then, beginning twelve months from the next succeeding rental paying date, the lessee shall resume the payment of rentals hereunder, otherwise this lease shall terminate as to both parties. This provision, however, shall not apply when there is a producing well on said land.

Fifth: If the lessor owns a less interest in the above described

land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid to the lessor only in the proportion which his interest bears to the whole and undivided fee. The lessee shall have the right to assign this lease or any interest therein, or any portion of the acreage covered thereby, in which last event lessee shall be liable only for royalties accruing from operations on the acreage retained by it and be liable only for such proportion of the rentals due under said lease as the acreage retained by the lessee bears to the entire acreage covered by the lease, and the assignee of the lessee shall have correlative rights and privileges with respect to said royalties and rentals as to the acreage assigned to it. The lessee shall pay for damages caused by its operations to growing crops on said land, and if requested, shall bury its pipe lines below plow depth, and no well shall be drilled nearer than 200 feet to the house or barn now on said land without lessor's written consent.

SIGNED AND SEALED this day of, 19.....
WITNESSES:

.....

P. O.....

.....

P. O.....

..... (SEAL)

..... (SEAL)

The above is the form of lease used by a well known Oklahoma oil company. It has another, differing from the above only in changing the annual to a quarterly rent.

This blank is one which would be used by a large company expecting to operate many wells over a wide extent of country, as it provides for contingences not likely to often occur and yet which might occur: For change of ownership in the land; for homesteads, dower and back taxes; for suits that might be brought; for partial failure of title in the lessor and other general clauses.

It also contains acknowledgments for Oklahoma, Wyoming and Colorado, which indicates the wide field of its operations.

This form of lease is carefully drawn to cover most of the contingencies of an oil and gas contract but an omnibus form for use everywhere and under all conditions makes a most cumbersome and unlawyerlike document.

It contains a covenant concerning protection against drainage, which is a covenant that should be inserted or omitted, according to the particular situation of the land demised with reference to ownership of adjoining ground.

In *Rose v. Lanyon Zinc Co.*, 68 Kan. 126, 74 Pac. 625 and *Pittsburgh, etc., Brick Co. v. Bailey*, 76 Kan. 42, 12 L.R.A.(N.S.) 745, 90 Pac. 803, are found oil and gas leases which have received judicial construction and *Brown v. Wilson*, 160 Pac. 94 (a case overruled on its main points) contains a full review of the several forms of oil and gas leases. Two other forms are found in *Mining Rights*, 15 ed. pp. 674 and 676.

It will be noted in the above forms that the demising clause is of the land itself, and not merely of the right to enter upon the land or the right to work it, and yet they have often been construed as a mere license or as grants of easements. Where the lease is upon proven territory or where oil can be expected with reasonable certainty the terms are apt to be less liberal to the lessee than where it is upon new ground commonly called Wild Cat.

OIL AND GAS LEASE. WYOMING FORM.

THIS AGREEMENT, Made and entered into this day of 192... by and between of County of State of part.... of the first part, and party of the second part.

WITNESSETH, That the party of the first part, for and in consideration of the sum of DOLLARS to him in hand well and truly paid, the receipt of which is hereby acknowledged, and in further consideration of the covenants and agreements hereinafter mentioned, does covenant and agree

to lease, and by these presents has leased and granted the exclusive right unto the party of the second part, his heirs or assigns, to enter and occupy the premises herein below described, for the purposes of operating and drilling for petroleum and gas, to lay pipe lines, erect necessary buildings, re-lease and sub-divide all that certain tract of land situate in County, State of Wyoming, described as follows, to-wit:

..... Section, Township, Range
Containing acres, more or less.

The party of the second part, his heirs and assigns, to have and to hold the said premises for and during the term of three years from the date hereof, and as long thereafter as oil or gas is produced in paying quantities, or rental paid thereon.

The party of the second part, his heirs or assigns, agrees to give to the party of the first part one-tenth part of the petroleum obtained from said premises, as produced in the crude state, the said one-tenth part of the petroleum to be set apart in the pipe line running said petroleum to the credit and for the benefit of the said party of the first part.

The said party of the first part to fully use and enjoy the said premises for the purpose of tillage, except such parts as may be necessary for said mining purposes, and a right of way over and across said premises to the place of mining or operating.

The said party of the second part is further to have the privilege of using sufficient gas and water from the premises herein leased, to run the necessary boilers and engines, the right to remove all machinery, fixtures and buildings placed on said premises by said party of the second part, or those acting under him, and is not to put down any well for oil or gas on the lands hereby leased within ten rods of the buildings now on said premises without the consent of both parties in writing.

The said party of the second part agrees that the party of the first part shall have gas for domestic purposes for one family, free of charge, first party paying second party for the necessary connections for such purposes, provided sufficient gas be produced from the premises over and above that necessary for running second party's boilers and engines.

IT IS AGREED, That if gas be found in paying quantities, the consideration in full to the party of the first part for such gas shall be One Hundred Dollars (\$100.00) for the gas when utilized and sold off the premises.

The party of the second part agrees to commence operations within and complete a test well within from the execution of this lease, or in lieu thereof thereafter pay to the said party of the first part Dollars per annum, payable annually in advance, until such test well is completed.

The above rental shall be paid to the party of the first part in person or by check to his order, deposited in the Bank, of Casper, Wyoming.

AND IT IS FURTHER AGREED, That the second party, his heirs or assigns, shall have the right at any time to surrender this lease, then, and from that time, this lease and agreement shall be null and void, and no longer binding on either party, and the payments which shall have been made shall be held by the party of the first part as stipulated damages for the non-fulfillment of the foregoing contract; and that all conditions between the parties hereunto shall extend to their heirs, executors and assigns.

And the said party of the first part hereby releases and waives any and all rights, privileges and exemptions under and by virtue of the Homestead Exemption Laws of the State of Wyoming.

And the said, wife of the said, upon the consideration aforesaid, does hereby release and forever waive unto the said party of the second part, his heirs and assigns, all her rights of dower and homestead in and to the above granted premises.

IN WITNESS WHEREOF, We, the said parties of the first and second parts, have hereunto set our hands and seals the day and year first above written.

Signed, Sealed and Delivered in Presence of

.....

..... [SEAL]

..... [SEAL]

Acknowledgment.

STATE OF WYOMING, }
 County of } ss:

I,, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that said

..... personally known to me as the persons whose names are subscribed to the annexed Oil and Gas Lease, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth, and expressly waived and released all right, title and benefit of exemption under any and all Homestead Exemption Laws, so called, of said State of Wyoming.

And I further certify that

 wife of the said

..... was by me first examined in reference to the signing and acknowledging such lease, the nature and effect of said lease being explained to her by me, and that she, being by me fully apprised of her right, and of the effect of signing and acknowledging said lease, did sign the same and did then acknowledge that she freely and voluntarily signed and acknowledged the same for the uses and purposes therein set forth and expressly waived and released all her rights and advantages under and by virtue of all laws of said State of Wyoming, relating to the Exemption of Homestead.

Given under my hand and notarial seal, this
 day of, A. D. 19....

My commission expires, 19...

[N. S.]

Notary Public.

The above form of lease is common in Wyoming. It contains most of the usual terms but has no reference to protection wells and no express warranty. It is condensed in

its language but perhaps less objectionable than some of the longer forms, especially for a new field where the outcome is problematical. It will be noticed that it does not demise the land in terms but "the right to enter and occupy" for the purpose of drilling for petroleum and gas.

It is impossible to draft any form which will cover all cases unless the objectionable form of an omnibus lease is adopted. But the following which is framed on the lines of the form on page 359 of the Mining Rights, care being taken to omit all of the numbered covenants not suited to the expectations of the parties and to insert any special covenant demanded by the situation—is as nearly a correct form as we can suggest.

MINING RIGHTS FORM.

THIS INDENTURE, made this first day of May, in the year of our Lord one thousand nine hundred and twenty, between Patrick W. Corcoran, of Walcott, Wyoming, lessor and Herbert F. Savage, of Salt Lake City, Utah, lessee or tenant:

WITNESSETH, that said lessor, for and in consideration of the royalties hereinafter reserved and the covenants and agreements hereinafter expressed, and by the said lessee to be kept and performed, hath granted, demised and let and by these presents doth grant, demise and let unto the said lessee all the following described real estate situate in the County of Carbon, State of Wyoming, to-wit: the North East Quarter of Section 1, Township 14 South, Range 60 West of the 6th P. M., containing 160 acres.

Always saving, reserving and excepting to the lessor the surface and the use of the surface for agricultural and residence purposes.

TO HAVE AND TO HOLD unto the said lessee for the term of two years from date hereof and thereafter as long as oil or gas is found in paying quantities.

And in consideration of such demise the said lessee doth covenant and agree:

1. To sink at least one well on the demised ground to the distance of at least one thousand feet unless oil or gas is found within a shorter distance.

2. And to complete such sinking within six months from the date of this lease.

3. In default of the completion of the well to the depth aforesaid or until oil or gas is found as aforesaid this lease shall at the option of the lessor become null and void and the demised premises shall become forfeit to the lessor:

Provided always, That the payment of \$100 rent before the expiration of said six months shall allow another period of six months for such sinking.

4. To deliver as royalty to said lessor one-eighth part of all oil found in and saved from said land.

5. In case gas is found in quantities sufficient to pipe or market, the lessee shall pay to the lessor \$50 per quarter from date when such gas is struck in the well, payable on the last day of each quarter: such quarters of year to be calculated from the date of this lease.

6. If either oil or gas is found in paying quantities the lessee will forthwith, at his own expense, procure and place on the premises tanks, pipes and all other necessary fixtures to economically save the product of such well and deliver its product to the buyer or carrier of the same.

7. In case oil is found in paying quantities the lessee will keep correct books of account showing the production of each well and the disposition of the proceeds thereof, which books shall be open to the inspection of the lessor or his agent during business hours at all reasonable times.

8. To deliver upon request to the lessor all the gas he may require for use at his buildings, or outbuildings on the premises, service pipes and fixtures to utilize the same being furnished by the lessor and kept in repair at his own expense.

9. To not sink any well within one hundred feet of any building now erected upon the premises, and to occupy with any well including its fixtures (except pipes) not more than one square acre.

10. To bury upon request of the lessor all oil or gas pipes used to conduct oil or gas from the premises, and to pay all damages done to timber and crops by reason of the burying,

repairing or removing of pipe lines over said premises, except on the square acre allowed to each well.

11. The lessee may sink as many wells as he sees fit, paying the same royalty, above provided, for each well, and shall have the right to subdivide the ground into lots or tracts and to sublease the whole or any part of the demised premises; and all fixtures are the property of the lessee or his sub-lessees, with the right to remove the same during the term or within a reasonable time thereafter.

12. Delivery to any pipe line or responsible oil buyer of the lessor's proportion of the products of the land with instructions to pay to the lessor his one-eighth of the gross market price shall be full compliance with the above covenant to pay royalty.

13. The said lessee shall have the right to use free of charge, all oil and gas he may need as fuel, and shall have the right to dig a surface well for water for his engine.

14. In case oil or gas is struck on and marketed in paying quantity from any adjoining land within one hundred yards of the exterior boundary of the demised tract the lessee will sink an offset well on the demised tract within fifty feet of the exterior line of such tract, upon written request and designation by the lessor of the point at which any such well is to be sunk, unless a well has been already started by the lessee within two hundred yards of such foreign well.

15. The lessor, upon his part, doth covenant and agree that he will not sink any well or lease for oil seeking any ground that he may own or purchase or control within two hundred yards of the exterior lines of the demised tract.

16. To keep an accurate written log of the sinking of each well showing the number of feet sunk each day, the kind of strata penetrated, the thickness of each stratum and the depth at which struck, and to allow such log to be examined from time to time by the lessor and to furnish copies of the same upon reasonable request.

17. And finally, that upon violation of any covenant or covenants hereinbefore reserved, the term of this lease shall, at the option of the said lessor, expire, and the same and said premises, with all the appurtenances, shall become forfeit to said lessor;

and said lessor or his agent may thereupon, after demand of possession in writing, enter upon said premises and dispossess all persons occupying the same, or at the option of said lessor the said tenant and all persons found in occupation may be proceeded against as guilty of unlawful detainer.

Each and every clause and covenant of this Indenture shall extend to the heirs, executors, administrators and lawful assigns of all parties hereto.

In witness whereof, the said parties have hereunto set their hands and seals.

Patrick W. Corcoran (Seal)

Herbert F. Savage (Seal)

Special covenants may, of course, be inserted to cover on any other point, especially as to the diameter and kind of casing, as to supplies to be furnished and payments by installments when the lessor stands a part of the expense of sinking, and also a reservation of the right to superintend or direct the work but such latter reservation is a dangerous clause because it practically kills the special terms as to details of work it being always easy for the lessee to assert that such details were waived or changed by the party in charge as superintendent, adviser or foreman.

The provisions against the homestead right and dower found in many ordinary blanks is in most cases unnecessary and the avoidance of useless covenants is an earmark of careful conveyancing.

If an option to purchase is a part of the contract insert after covenant No. 17 the following:

The Option.

And in consideration of the acceptance of the foregoing lease and the expenditures to be made thereunder and the well and faithful keeping of the covenants thereof, the said lessee shall have the right to purchase the said demised premises by payment of the sum of ten thousand dollars on or before the first day of May, A. D. 1921, time being of the essence of the contract as to such payment. And upon the tender of such payment

the lessor will make, execute, acknowledge and deliver at his own cost and charges, good and sufficient deed or deeds of warranty to be delivered to the lessee or such person or company as he shall nominate, conveying the said premises clear of incumbrance.

The forfeiture, surrender or termination of the above lease for any cause shall render this option void, and the above mentioned payment may not thereafter be tendered.

Acknowledgment

Is not required to the lease unless it is intended to place the document on record or to comply with some local statute and the possession of the lessee is notice to all parties of his rights under his papers. If acknowledgment is demanded a form is printed on page 496.

No one form can fitly cover every case and if the parties consider the property worth the expense of development they should consider it worth the fee of a good lawyer to draw the contract, for when laymen attempt to use any printed blank or to follow printed instructions without legal counsel they are anticipating trouble which good professional advice might save them from.

CHAPTER 81.

THE WITHDRAWAL LEGISLATION AND THE NAVAL RESERVES.

The withdrawal Acts are interlocked with Statutes concerning severance of the mineral and surface title and with the Forest Reserves and the Naval Reserves.

The title and text of the original withdrawal Act, approved June 25, 1910, which was of course later in date than the proclamation of 1909, which led up to or induced this withdrawal Act and is known as the Pickett Act is printed below. Although replete with provisos and references to exceptions and indifferent matters, the whole substance of the Act is practically confined to the words reserving the rights of all persons at the date of withdrawal who are in "diligent prosecution of work leading to discovery of oil or gas."

Group Location, Agency, Sufficient Diligence.

On January 1, 1908, fifteen locators in the name of twenty-one persons made two hundred and seven locations, all in the same locality, which locations were on March 4, 1908, conveyed to Trustees and the Trustees transferred to a corporation.

Although some of the locators acted as agents for others it was in proof that there was an agreement between the locators that "no person was to have a larger interest in any one location than that which the law permits." The Court held, citing *Book v. Justice Mining Co.*, 58 Fed. 106 and other cases, that the locations by agents were valid.

Before the locations were made a large fund had been contributed for the development of the property, timber had been delivered on the claim for a drilling rig, a complete outfit costing \$7,500 had been ordered and the work was continuous and uninterrupted until December 25, 1918, when oil was struck.

The ground in controversy was within the withdrawn area of September 27, 1909.

Even if the locators did not intend to develop the whole two hundred and seven claims such fact would not affect the validity of the claim in controversy on or for which the work above mentioned was made. *U. S. v. Dominion Oil Co.*, 264 Fed. 955.

THE ORIGINAL WITHDRAWAL ACT.

An Act to authorize the President of the United States to make withdrawals of public lands in certain cases.

Authority to Withdraw.

That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress. 36 Stat. L. 847, Comp. L. § 4523.

Only Coal, Oil, Gas and Phosphates Covered.

SEC. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates:

Rights of Oil Seekers Preserved.

Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work:

Claims Initiated after Withdrawal.

And provided further, That this Act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this Act:

Agricultural Entries Protected.

And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made:

New Forest Reserves Prohibited.

And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress. 36 Stat. L. 847, Comp. L. § 4524, amended as noted below.

Withdrawals to Be Reported.

Sec. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals. Approved, June 25, 1910. 36 Stat. L. 847, Comp. L. § 4525.

Its Enactment and Provisos.

The Act above printed followed the withdrawal proclamation of September 27, 1909.

Like many other Acts of Congress it is confused by numerous provisos and reference to things not connected with the princi-

pal subject matter of the Act. There are four **provisos** in its section 2.

Its first section declares that public lands may be withdrawn from settlement and sale by order of the President.

The first clause of its second section, which is the material section, allows the lands so withdrawn to remain open for mineral locations except as to coal, oil, gas and phosphates.

Its first proviso protects bona fide occupants of oil or gas bearing lands in diligent prosecution of work leading to discovery.

Its second proviso is a deprecatory clause of non-recognition of asserted rights initiated after the date of the withdrawal of such lands.

The third proviso is an exception on behalf of agricultural interests.

The last proviso, having no reference to the substance of the Act forbids the further creation of Forest Reserves except by Act of Congress.

Amendment of 1912.

The Act of August 24, 1912, 37 Stat. L. 497, substitutes the second section of the 1910 Act: It is practically a verbatim repetition of the section. Instead of saying that the land is open to all minerals *except* coal, oil, gas and phosphates, it says that they shall be open to the discovery and entry of metaliferous minerals and cuts out California from the list of States where new forest reserves were forbidden.

These two Acts constitute the legislation commonly called the Pickett Act.

Relief Acts.

The Act of March 2, 1911, 36 Stat. L. 1015, declares that no oil or gas patent should be refused because of any transfer prior to discovery but does not apply to withdrawn lands. The necessity for any such Act is not apparent and further it was entirely retrospective, covering only claims located before the date of its passage.

On August 25, 1914, 38 Stat. L. 708, was passed an amendment to the above cited Relief Act.

It is allowed the Secretary of the Interior to enter into agreements for the disposition of the production of the well until final determination of the title and seems to be confined to the oil and gas only, and not to cover the title to the well itself. And such products must have been from wells on withdrawn lands on which discovery had been made before the passage of the Act or on which drilling was in progress on October 3, 1910.

The only practical benefit that can be gathered from these Acts of 1911 and 1914, the text of which is printed below, as to the holders of claims on withdrawn lands, would seem to be that they amount to a condonation of the original trespass. There were no prohibitions of transfers of interests in placer claims either before or after discovery, as seems to have been assumed in the 1911 act. This 1911 Act expressly excludes withdrawn lands from its operation while the 1914 Act includes such withdrawn lands. The 1911 Act is mentioned in Section 18 of the Oil Leasing Act of 1920 referring to the disposition of the impounded proceeds but not to any disposition of the title.

THE SO-CALLED RELIEF ACTS OF 1911 AND 1914.

AN ACT to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Prior Transfers of Oil Claims Validated On Withdrawn Lands.

That in no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person, or corporation, prior to discovery of oil or gas therein, but if such claim is in all other

respects valid and regular, patent therefor not exceeding one hundred and sixty acres in any one claim shall issue to the holder or holders thereof, as in other cases:

Withdrawn Lands Excepted.

Provided, however, That such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry. Approved March 2, 1911, 36 Stat. L. 1015.

The Second Act was passed with the Title.

Chap. 287.—An Act To amend an Act entitled "An Act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest," approved March second, nineteen hundred and eleven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

That an Act entitled "An Act to protect the locators in good faith of oil and gas on the public lands of the United States, or their successors in interest," approved March second, nineteen hundred and eleven, be amended by adding thereto the following section:

Agreements for Impounding Oil Proceeds Pending Controversies.

"Sec. 2. That where applications for patents have been or may hereafter be offered for any oil or gas land included in an order of withdrawal upon which oil or gas has heretofore been discovered, or is being produced, or upon which drilling operations were in actual progress on October third, nineteen hundred and ten, and oil or gas is thereafter discovered thereon, and where there has been no final determination by the Secretary of the Interior upon such applications for patent, said Secretary, in his discretion, may enter into agreements, under such conditions as he may prescribe with such applicants for patents in possession of such land or any portions thereof, relative to the disposition of the oil or gas produced therefrom or the proceeds thereof, pending final determination of the title thereto by the

Secretary of the Interior, or such other disposition of the same as may be authorized by law.

Navy Petroleum Fund.

Any money which may accrue to the United States under the provisions of this Act from lands within the naval petroleum reserves shall be set aside for the needs of the navy and deposited in the treasury to the credit of a fund to be known as the Navy Petroleum Fund, which fund shall be applied to the needs of the navy as Congress may from time to time direct, by appropriation or otherwise." (As amended Aug. 25, 1914, 38 Stat. at L. 708.)

Naval Reserves Royalty.

It protects any money received under such settlement from oil on the Naval reserves by applying it to the navy petroleum fund.

Severance of Surface and Mineral Estates.

The Act of July 17, 1914, 38 Stat. L. 509 provides for agricultural entries of the surface of lands, withdrawn or classified as phosphates, nitrates, potash, oil, gas or as asphaltic minerals or which were valuable for such deposits, reserving the minerals to the United States, which was perhaps the first serious attempt, not locally limited, to sever the surface title from the mineral title in disposing of the public domain. It anticipates and provides for the right to prospect under the surface and for some of the incidents necessarily attaching to such severance. Comp. L. §§ 4640A-C.

Potash.

The surface of potash land may be patented under the non-mineral land laws of the United States under the Act of July 17, 1914, 38 Stat. L. 509 reprinted as sections 4640A-4640C. of the Compiled Laws.

A special Act of January 11, 1915, 38 Stat. L. 792, Compiled Laws, section 4640D, allows the patenting of phosphate claims

made before the date of the Act, as placer locations, if not on withdrawn lands. Without the aid of such Statute, if valid as to notice, staking and record, they could be patented as ordinary Placer claims.

By the Act of October 2, 1917, 40 Stat. L. 297, Compiled Laws section 4640E-4640K, the Secretary of the Interior is authorized to issue two year permits to prospect for chlorides, sulphides, carbonates, borates, silicates or nitrates of potassium (except Searles Lake, California): The area not to exceed 2560 acres.

The Secretary is authorized to prescribe rules and regulations under which authority Circular No. 594 was issued March 21, 1918.

Special provision is made in the Act for leases on the Searles Lake deposit and for leases in Sweetwater County, Wyoming. Outside of these local exceptions, the general tenor of the Act is to allow the issue of permits, to be followed by leases, reserving the surface to the United States. The Act seems to have been a war measure and its section 13 provides that the President should regulate the price of the mineral and prevent its exportation from the United States with other obscure reservations and the leasing Act of 1920 in its phraseology seems to have been framed largely upon this Act.

Said circular 594 contains the usual regulations with form of application for lease and the form of the lease and permit for camp site or refining works.

Sec. 3, of the Act of July 17, 1914, 38 Stat. L. 509, providing for surface patents on withdrawn lands reserving the minerals to the United States, does not cover lands reserved for the use and benefit of the Navy. *In re State of California*, 44 L. D. 127.

The form of bond to a party taking the mineral title where the surface has been entered by another is found in 47 L. D. 245.

Utah Severance Act.

The Act of August 24, 1912, 37 Stat. L. 496, is a special Act allowing agricultural entries of the surface of oil and gas land covered by withdrawals confined to the State of Utah. Comp. L. §§ 4638, 4639.

Idaho Act.

The Act of February 27, 1913, 37 Stat. L. 687 is a special Act allowing the State of Idaho to accept the surface title to certain lieu tracts on the withdrawn area, reserving the phosphates and oil to the United States. Comp. L. §§ 4863-4865.

THE FOREST RESERVES.**The Appalachian Forest Act**

Is thrust into a prominent position by its mention in the first sentence of the Leasing Bill. It obtains its name from the generic word covering the series of low ranges of mountains extending from Canada to Alabama.

It is supposed to apply to water sheds which cover more than one State and its provisions allow such States to enter into compacts to conserve the water. This was to comply with section 10 of Article 1 of the Federal Constitution which says: "No State shall without the consent of Congress enter into any agreement or compact with another State." The general power given by the Act to enter into such compacts apparently sets aside the Constitution which would seem to mean that express consent should be given to each several compact. However that may be we do not know that it has been so far questioned.

It provides for co-operation between the Secretary of Agriculture and the States for protection against Forest fires, and for the purchase of lands necessary to protect the navigation of streams. Lands so purchased are to become National Forests and a class of National Forests which are not allowed to be permitted or leased as oil lands.

Under this Act according to the Use Book of 1918 about one million acres have been purchased and constituted into National Forests situate in Alabama, Georgia, Maine, New Hampshire, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, in most of which States little or no oil has ever been found. That the purchase of land under this Statute would protect the water sheds is a far call but some color had to be

given to the Act to bring it within Constitutional powers. With its amendments it is found in sections 1574-1587B of the Compiled Laws.

National Forests.

The withdrawal of land for Forest Reserves began in 1891 and the name was changed to National Forests in 1905. The location of mining claims on such Forests has never been forbidden and, except the Appalachian Forests, they come under the terms of the 1920 Act so that the existence or supposed existence of oil on a Forest Reserve does not debar obtaining permit and lease. The details of their conservation are regulated by the Use Book which goes into minute detail and placer locations always have been, and doubtless leases and permits will continue to be, liable to constant inquisition from the Forest Rangers. On Pages 419-422, of the Mining Rights is found a history of the origin and progress of the Forest Reserves. The Statutes in force are reprinted as Title XXXIIA of the Compiled Laws, 1918. The land withdrawn as National Forest is about equal to the area of the State of Texas and they include large tracts above timber line.

Administration.

The administration of the National Forests is divided. The chief control is given to the Department of Agriculture until it comes to passing title to tracts within their bounds, when the office of the Interior Department attaches.

The Rules and Regulations are those issued from the former but they are not left without mention in the Land Office rules and the two sets of Rules as to Timber at least do not fully agree: L. O. Rule 114, Citing Comp. L. Sec. 5133.

Where a divided dominion exists controversies will arise and each interested party will stretch to the limit its assertion of power. Considerable correspondence on this point is scattered through the Land Decisions.

The rules of the Department of Agriculture are to a certain extent but not fully, set forth in the Use Book and they make

a compilation covering many topics including fire protection, preservation of timber from destruction by trespass or by insects, illicit sales of timber, the water, national monuments, antiquities, grazing, hunting and fishing and the preservation of the game.

These forests as to lands purely agricultural are subject to entry and rights of way over them are provided for but we have no concern with them except as to mineral rights.

Mining Claims in Reserves.

The limits between the two jurisdictions are considered in *Instructions to the Commissioner of the General Land Office*, 34 L. D. 64, and in correspondence between the two secretaries in 33 L. D. 609, *in re Letter of Secretary Hitchcock*, but they do not clearly define such limits.

"There is no restriction whatever on going on the National Forests and locating mining claims. No permit is necessary." Use Book, page 151.

The above quoted concession is merely an admission of an undisputed fact, announced in the Statutes and will doubtless apply to all entries for the purpose of securing permits or leases on oil and gas and the other minerals enumerated in the Leasing Act of 1920.

But the department of the Interior claims the right to enquire into the good faith of prospectors and locators, which leads to friction between the mineral seeker and the government. *United States v. Lavenson*, 206 Fed. 755.

Evidence—Mineral Value.

In a contest as to oil value of lands the evidence is not to be confined to the particular Quarter Sections involved but may extend to the surface indications and the oil production of surrounding and adjacent lands. The lands in controversy were held to be mineral. *Kern Oil Co. v. Clotfelter*, 33 L. D. 291.

Where in a Forest Reserve case the issue is *mineral vel non*, mineral means valuable mineral and the use of the word "valu-

able" qualifying "mineral" is maintained. *In re Cook*, 33 L. D. 109.

The details of these regulations amount to a code of procedure declaring even the different measure of damages in the several sorts of trespass cases, which is purely a judicial question. And that they encroach dangerously close to the assumption of legislative and judicial powers which cannot be delegated to a department, is apparent to every lawyer familiar with land office practice.

Power of Department to Regulate.

The National Forests Acts came up for consideration by the Federal Supreme Court in *Light v. United States*, 220 U. S. 523, 55 L. ed. 570, 31 Sup. Ct. Rep. 485. The Court upheld without further argument the position taken in *U. S. v. Grimaud*, 220 U. S. 506, conceding practically unlimited power to the Department to make and enforce rules and regulations. The appellant had allowed his cattle to range where they would naturally drift within a Forest Reserve against which he had been enjoined by the Circuit Court. The appellate Court held that there was no constitutional restriction against withdrawing large bodies of land from settlement and that Congress can deal with the public lands "precisely as an ordinary individual may deal with his farming property." The only restriction conceded was in a quotation from *Van Brocklin v. Tennessee*, 117 U. S. 158, that the United States "do not and cannot hold property as a monarch for private or personal purposes." This quotation is of course inconsistent with the cited proposition that it may deal with such land precisely as an ordinary individual, but the apparent contradiction disappears on consideration of the fact that the United States is acting in a governmental capacity for the benefit of the entire body of citizens.

The history of the Public Domain illustrates the expression that extremes meet and the statement, paradoxical but true, that two parties travelling in opposite direction may arrive at the same point. The Public Domain, when the settlement of the Great West began, was as free to the American citizen as the

Garden of Eden to Adam at the first creation. Everything that he found was his and was given to the first comer by the Government, subject only to the ordinary rules of order to prevent unseemly strife. The land, the water, the timber, the minerals, he obtained almost without cost and by a simple procedure.

Now everything is changed; wherever he goes there are restrictions. A country too much governed is in as bad a condition as a country without any government at all. There could be no greater contrast between the Republic of the United States and the Empire of Russia and yet we have reached a state of affairs where there is but little difference. The delegation of power to departments, the creation under these departments of an army of officers, with the right to arrest and imprison with almost the power to finally condemn, is a practical deprivation of liberty and the secret service of the United States in the number of its employees and the millions of dollars expended to enforce it, surpasses the spy system of Russia in its days of imperial power.

In *United States v. Northern Pacific Ry. Co.* 264 Fed. 898, the Government had attempted to withdraw lands, not yet selected by the Company but upon which the right of selection had vested. The court held that the Government cannot withdraw land for National Park purposes on which a railroad grant company, had at the time of the withdrawal, the right to select lieu lands. It cannot for such purpose withdraw indemnity lands, in violation of the contract which the Acts of Congress amount to, vesting property rights in its grantees.

THE NAVAL RESERVES.

These are lands withdrawn by order of the President on the recommendation of the Secretary of the Interior and such recommendation is based on the suggestion of the geological survey.

The description of the lands so withdrawn is forwarded to the proper local Land Office, so as to become a record accessible to interested parties.

Area of the Reserves. Relation to the Leasing Act.

There were so withdrawn up to October 1, 1919, sixty-four petroleum reserves covering millions of acres and up to the same date there had been forty restorations of comparatively small portions of this immense area. These naval reserves are studiously excepted from the operation of the Leasing Act. Its first section reads "excluding lands withdrawn or reserved for military or naval uses or purposes except as hereinafter provided." The area of land covered by military reservation is, as has been stated, not extensive.

The area covered is found in Arizona, California, Colorado, Louisiana, Montana, North Dakota, Utah and Wyoming, and the whole of the oil lands in Alaska. The few tracts withdrawn in Oregon and New Mexico have been restored.

Section 18 covering claims on withdrawn land forbids leases on any naval petroleum reserves, but by a later clause in the same section, seems to allow them, as to the producing wells.

Section 35 contains a special provision for the disposition of royalties from the naval reserve lands.

History of the Reserves—Bulletin 623.

In Bulletin No. 623, published in 1916, is found a complete history of the origin and progress of these reserves.

The same bulletin presents the arguments defending these reserves which arguments we do not pretend to dispute. The reasons, which the bulletin claims to amount to absolute necessity, are cogent and the threatened waste and destruction of the oil supplies are strongly stated. The bulletin fairly admits that private loss amounting to immense sums of honestly invested capital became a permanent loss.

The first suggestion of such withdrawals, if suggestion it could be called, occurred as early as January 5, 1865, being a letter to the Commissioner of the General Land Office informing him of the existence or supposed existence of extensive petroleum values in California. The department immediately acted on the letter by withdrawing the suspected ground from entry, followed by other withdrawals in California, Oregon and Wyoming. There

were withdrawals and cancellations of withdrawals sporadically, prior to September 27, 1909, on which date there came the sweeping order of the President followed by the Act of June 27, 1910. The power of the President to withdraw without Congressional action was affirmed by the Federal Supreme Court as noted on page 255.

The amount of oil Territory withdrawn by these reserves is so great that it should supply the wants of the navy for an untold number of years, the withdrawals under color of supplying the needs of the navy, being really intended for general conservation, to prevent the extraction of the oil during the present generation and to anticipate the time when the world will have greater need for supplies which will soon be in sight of their point of exhaustion.

The totals of the acreage withdrawn by States, are given on page 25 of said bulletin 623 the aggregate reading 5,587,077 acres, the larger withdrawals being in California and Utah, with comparatively small amounts in Colorado and North Dakota. The withdrawals are by sweeping description so that on their face they cover a large acreage already patented or excluded by railroad grants, locations and other vested rights.

CHAPTER 82.

TEXAS.

The State of Texas owns its own Public Lands and does not come under the provisions of the Oil Leasing Act, nor in fact under any of the Congressional Acts or Departmental Regulations.

It has a Leasing system of its own, but practically has surrendered control of its Oil and Gas Lands to the Railroad Commission. The material statutes concerning this commission are printed below, and also the regulations. The Acts of 1917, Pages 58 and 382, of the Session Laws, are the latest Statutes on the carrying out of its Leasing system.

By Act of March 17, 1919 quarterly reports are required of Oil Operators and a tax of $1\frac{1}{2}$ per cent. on the product is levied. Acts of 1919, Regular Session, Page 128.

An Act was approved July 23, 1919, Special Session Laws, Page 51, providing for the leasing of the Oil and Gas rights of the State in its Salt-water land and unsurveyed school land.

On February 17, 1919 the following Act was passed by adding a section numbered 78 of the Corporation chapter:

Drilling Corporations.

"A private corporation may be formed and chartered for the establishment and maintenance of drilling companies, with authority to own and operate drilling rigs, machinery, tools and apparatus necessary in the boring, or otherwise sinking of wells in the production of oil, gas or water, or either, and the purchase and sale of such goods, wares and merchandise used for such business, and declaring an emergency." Acts of 1919, Regular Session, Page 8.

This Section seems to be confined to drilling companies as distinguished from mining companies.

By Act of March 24, 1919 an Act was passed allowing cities and towns to lease such oil lands as they might own. Acts of 1919, Regular Session, Page 183.

By the Act of March 24, 1919, the mineral rights of the State in certain school and other public lands were released. Such lands had been sold without reserving minerals and the statute was passed to prevent any claim that they should have been reserved. Acts of 1919, Regular Session, Page 188.

By Act of March 24, 1919, Guardians were authorized to petition for permission to lease the mineral rights of their wards. Acts 1919, Regular Session, Page 185. Another Act of the same date, Page 251, provides for the leases of the Oil and Gas rights of deceased persons.

By Act approved April 3, 1919, Regular Session, Page 311, the practice in injunction cases against oil wells is regulated, which Act reads as follows:

Bonds and Receiver in Injunction Suits.

Article 4643A. No injunction or temporary restraining order, shall be issued by any judge of this State prohibiting any sub-surface drilling or mining operations on the application of any adjacent land owner, claiming injury to his surface or improvements, or loss of, or injury to the minerals thereunder, unless the person, corporation or partnership against whom drilling or mining operations is alleged as a wrongful act is shown to be unable to respond in damages for any injury that may result from drilling or mining operations; provided, however, that the person, corporation or partnership against whom such injunction is sought shall enter into a bond with one or more sufficient sureties, in such sum as the judge hearing the said application and having jurisdiction thereof shall fix, securing the complainant in the payment of any injuries that may be sustained by such complainant as the result of such drilling or mining operations; provided, that the court may, when he deems it necessary to protect any or all interest involved in such litigation, in lieu of such bond, appoint a trustee with such powers as the court may prescribe or appoint a receiver under the provisions of the statute, to take charge of and hold the minerals pro-

duced from the lands of the complainant or the proceeds thereof subject to the final disposition of such litigation.

This section does not seem to materially modify the practice as it existed before the Act except that it denies the writ against a solvent party although it forces such solvent party to give a bond but allows the writ against a non-solvent party unless he is able to furnish a bond.

Later in the same year was approved the following Act concerning the Oil and Gas rights of the State in its public lands in minute detail which seems to release the State rights under certain conditions where the land had been sold reserving Oil rights. July 31, 1919, Special Session, Page 249.

RELINQUISHING TO THE OWNERS OF THE SOIL FIFTEEN-SIXTEENTHS OF OIL AND GAS UNDER SAME.

CHAPTER 81.

An Act to promote the development of oil and gas resources of the State of Texas in Asylum, University and public free school lands, constituting the owner of the soil, the agent of the State in procuring said development in certain instances and in the manner provided herein, and in consideration for said services, relinquishing to and vesting in the owner of the soil an undivided fifteen-sixteenths of all oil and gas and the value of the same that may be within or upon all surveyed public free school and asylum land and portions of same which have heretofore been sold and which may hereafter be sold with a mineral classification or a mineral reservation, and reserving to the public free school and asylum funds the remaining undivided one-sixteenth and the value of same; authorizing the owner of the soil to sell or lease same for the development of the oil and gas that may be therein and securing to said funds their portion thereof; providing for the drilling of offset wells; providing for the forfeiture of oil and gas rights for failure to comply with the law and for the reinstatement of forfeited rights; providing for a combination of oil and gas permits and for the extension of time in which to begin and complete development upon pay-

ment of sums due under the terms of the permits; providing for the assignment of permits and leases; providing for the relinquishment of the whole or part of a permit; providing that permits on University land shall come within certain provisions of this Act; providing that payment per acre and obligations to pay royalty shall, when paid, be in lieu of damages to the soil; providing that rights secured under former law shall not be affected except as changed or modified by this Act and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Preamble. Rents Relinquished on Oil and Gas.

SECTION 1. To promote the active co-operation of the owner of the soil and to facilitate the development of its oil and gas resources the State hereby constitutes the owner of the soil, its agent for the purposes herein named, and in consideration thereof, relinquishes to and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas and the value of the same that may be upon or within the surveyed free school and asylum lands and portions of such surveys that have heretofore been sold with a mineral classification and that which may hereafter be sold with a mineral classification or mineral reservation, subject to the terms and conditions of this Act and any future law; and the remaining undivided portion of said oil and gas and the value of same is hereby reserved for the use and benefit of the public free school fund and the several asylum funds.

Owner May Sell or Lease.

SEC. 2. The owner of said land is hereby authorized to sell or lease to any person, firm or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions of this Act and the reservations herein, for the benefit of the school and asylum funds. All leases and sales so made shall be assignable; provided that no oil or gas rights shall be sold or leased hereunder for less than ten cents per acre per year, plus royalty,

and the lessee or purchaser shall in every case pay to the State ten cents per acre per year of sales and rentals, and, in case of production, shall pay to the State the undivided one-sixteenth of the value of the oil and gas as reserved in Section 1 of this Act;—it being expressly provided that all sales or leases of the land made by the owner under this Section of the Act shall, as respects the rental to be paid, be made for and inure to the benefit of the State to the extent herein provided.

1000 Foot Protection.

SEC. 3. If oil or gas should be discovered in paying quantities on land that is not included in this Act and within one thousand feet of land that is so included, the owner, lessee, sub-lessee or receiver or other agent in control of such land as is included herein, shall in good faith begin the drilling of an offset well or wells upon such land as is included herein within one hundred days after the first discover, and prosecute same with diligence to completion. Every offset well shall be drilled to the depth necessary for effective protection against undue drainage by other wells on other lands in that locality.

Forfeiture If Offset Well Not Sunk.

SEC. 4. If the persons aforesaid, who own or control land included in this Act, should fail or refuse to begin such drilling of offset wells thereon within the time required or fail or refuse to drill such well or wells diligently and in good faith or fail or refuse to drill such well or wells to the depth necessary for the purpose intended, or fail or refuse to use the means necessary to the development of any well or wells thereon within the time required or fail or refuse to drill such well drilled thereon, thereupon the relinquishment herein granted shall ipso facto terminate and the rights acquired thereunder shall likewise terminate, and the oil and gas relinquished herein shall revert to and become the property of the State's General Revenue Fund and when the Commissioner of the General Land Office is sufficiently informed of the facts which so terminate such rights, he shall indorse on the wrapper containing the papers relating to

the sale of the land words indicating such termination and sign it officially.

Sale after Forfeiture for Bonus and Royalty. Bidder Must Sink.

SEC. 5. When the relinquishment granted herein and the rights acquired thereunder shall have been terminated as provided in the preceding section, the Commissioner shall take possession of the land and advertise the oil and gas therein for sale. All such sales shall be made at such times as the Commissioner may determine and in the same manner as is now provided for the sale of public free school land. The sale shall be made to the person, firm or corporation that will pay the highest price therefor in addition to one-eighth of the oil and gas produced or the value of same, which shall be reserved to the public free school fund. The sum received in addition to the reserved one-eighth shall be divided equally between the General Revenue Fund of the State and the owner of the soil after deducting the expenses incident to the advertisement and sale. Purchasers at such sales shall begin the drilling of the necessary offset wells within sixty days after the acceptance of their offer and the failure to do so and the failure to comply with the provisions of this Act relating to the drilling of offset wells shall likewise operate as a termination of the rights acquired thereunder and the substances therein shall be subject to sale as herein provided.

Double Royalty to State and Owner.

SEC. 6. One-sixteenth of the value of the gross production of oil saved and one-sixteenth of the gross production of gas saved and sold off the premises shall be paid to the State and like amounts to the owner of the soil on or before the twentieth day of each month for the preceding months and it shall be accompanied by a sworn statement of the owner, manager, or other authorized agent, showing the gross amount of oil produced and saved since the last report and the gross amount of gas produced and sold off the premises, and the market value of same, together with a copy of all daily gauges of tanks, gas meter readings, if

any, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into the pipe lines, tanks or pools and gas lines or gas storage. The books and accounts, the receipts and discharges of all lines, tanks, pools and meters, and all contracts and other records pertaining to production, sale and marketing of oil or gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor, or the representative of either. .

Royalties. To What Fund Credited.

SEC. 7. All sums due the State under the operation of this Act shall be due and payable at Austin, Travis County, and shall be paid to the Commissioner of the General Land Office and he shall transmit all remittances in the form received to the State Treasurer, who shall credit the fund to which the land originally belonged with the amount paid upon production.

Liens to State and Owner.

SEC. 8. The State shall have a first lien upon all oil and gas produced upon the land to secure the payment of all sums of money that may be due or become due under the provisions of this Act; and the owner of the soil shall have a second lien thereon to secure the payment of any sum that may be due him.

Forfeiture for Breach of Lease.

SEC. 9. If any person, firm or corporation, operating under this Act should fail or refuse to make the payment of any sum of money due within thirty days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish to the General Land Office a correct log of any well, the rights acquired under the permit or lease shall be subject to

forfeiture by the Commissioner of the General Land Office, and when sufficiently informed of the facts which authorize a forfeiture, he shall forfeit same, and the oil and gas shall be subject to sale in the manner as provided in Section five of this Act; except the owner of the soil shall not thereby forfeit his interest in the oil and gas; provided such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene upon satisfactory evidence of future compliance with the provisions of this Act.

Conflicting Permits.

SEC. 10. The provisions of this Act relinquishing to the owner of the soil fifteen-sixteenths of the oil and gas in or under such soil is made subject to the rights now existing under valid permits to prospect for oil and gas that have heretofore been issued or which may hereafter be issued upon valid application now on file for such permit; and the rights secured under such permits or applications for permits shall be terminated in the manner provided by the law under which such rights were secured or under the provisions of this Act, but when such rights shall be so terminated, such relinquishments shall be fully effective; provided a relinquishment to the State of a lease that may be producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in such lease.

Severance of Mineral and Surface Rights.

SEC. 11. If one has heretofore or should hereafter acquire any valid right to the oil and gas in any unsold public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights to any of the oil and gas that may be therein, but when such rights shall be terminated in the manner provided in the law under which such rights were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas herein relinquished and shall be thereafter subject to the provisions of this Act. A forfeiture of

the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the State.

Assignments and Combinations of Permits.

SEC. 12. Permits issued, or to be issued upon applications heretofore filed, or hereafter filed upon any land included in this Act may be assigned as a whole into one ownership or may be grouped or combined into one organization, upon such terms as the owners may agree, and in one or more groups or combinations not to exceed sixteen sections of 640 acres each, more or less, in one group, for the purpose of developing oil and gas. All such assignments and agreements shall be recorded in the county or counties in which the land or part thereof is situated and shall be filed in the General Land Office within sixty days after the execution of the same, accompanied by one dollar as a filing fee.

Time to Commence Drilling.

SEC. 13. The owner of a permit issued upon applications heretofore or hereafter filed shall have eighteen months from the date thereof in which to begin the drilling of a well for oil and gas on some portion of the land included therein. The owner or owners of a combination of permits, held by assignment or agreement shall have a like period of eighteen months from the average date of the permits included therein in which to begin the drilling of a well for oil and gas on some portion of the land included therein, and the drilling on one permit shall be sufficient for the protection against forfeiture of all the permits included in such combination. Owners of permits included herein shall have three years after the date of the permit and the same time after the average date of the permits placed in a combination of permits in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease applied for within said time, all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall become subject to the provisions of this Act relating to the relinquishment of oil and gas to the owner of the soil.

Report of Oil Strike to Be Made with Verified Log. Lease Thereupon Issues.

SEC. 14. If oil or gas should be produced in paying quantities upon any land included in this Act, the owner of the permit shall report the development to the Commissioner of the General Land Office within thirty days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased and accompany the application with a log of the well or wells, and the correctness of the log shall be sworn to by the owner, manager or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed ten years, subject to renewal or renewals.

Rents and Royalties.

SEC. 15. The owner of a permit or combination of permits that desire to avail themselves of the terms of this Act shall pay to the State ten cents per acre, annually in advance, for the second and third years and shall likewise pay to the owner of the soil ten cents per acre for the first year of such permit before availing himself of the privileges of this Act, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the Commissioner of the General Land Office, and when sufficiently informed of the facts which subjects the permit or permits to forfeiture the said Commissioner shall forfeit the permit or permits by an endorsement of forfeiture upon the wrapper containing the papers relating to the permit or permits and sign it officially. The payment of the ten cents per acre to the owner of the soil may be made in person or by payment to the County Clerk of the county in which the land is situated, and the said clerk shall deposit such payment in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil should refuse to accept such payment, the said clerk shall withdraw such deposit and return same to the owner of the permit or permits. The payment, or the tender of payment, shall be evidenced by the receipt of the owner or

part owner or County Clerk filed among the papers in the General Land Office relating to such permit or permits.

Surrender of Permit.

SEC. 16. The owner of a permit or combination of permits may relinquish to the State a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the county or counties in which the land or a part thereof is situated and file it in the General Land Office within sixty days after its execution, accompanied by one dollar as a filing fee.

Permits on University Land.

SEC. 17. The provisions of this Act, so far as they relate to a combination of permits and extensions for time for beginning development and time for development, shall apply to permits heretofore issued and those hereafter issued upon University land.

Offset Damages to Soil.

SEC. 18. The payment of the ten cents per acre and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil.

Saving Clause.

SEC. 19. All the terms, conditions, limitations and obligations provided in the law under which permits included herein have been or may be issued and rights secured therein shall continue and remain in full force and effect except as changed or modified by this Act.

(Approved July 31, 1919.)

Its provisions then follow as above printed, in language obscure to a degree, but they seem to be intended to allow to

purchasers who had bought State lands with the minerals reserved to the State, to lease or sell such lands or the minerals, or both.

The relinquishment of the fifteen-sixteenths interest is a round-about method of reserving a $1/16$ royalty to the State.

There is nothing in the Act to prevent the owner from selling the surface under his original title but if he either sells or leases the minerals, he must reserve an acreage rent of 10 cents to the State besides a royalty of $1/16$. This $1/16$ is apparently to represent the $1/16$ interest reserved to the State and can hardly be construed to be an additional $1/16$, which would make the royalty one eighth.

The protection area of 1,000 feet mentioned in the third section is beyond all the usual precedents and is a burdensome demand on the lessee.

The interminable title to the Act, in order possibly to comply with the Constitutional clause as to conformity between the Statute and the name of the Statute, amounts to an index of the contents.

OIL AND GAS CONSERVATION LAW.

S. B. No. 350.]

CHAPTER 155.

Acts of Thirty-sixth Legislature, Regular Session.

An Act to conserve the oil and gas resources of the State of Texas.

Be it enacted by the Legislature of the State of Texas:

Waste Defined and Prohibited.

ARTICLE 1. Natural gas and crude oil or petroleum shall not be produced in the State of Texas in such manner and under such condition as to constitute waste. The term "waste" in addition to its ordinary meaning shall include (a) escape of natural gas in commercial quantities into the open air from a stratum recognized as a natural gas stratum; but this is not intended to have application to gas pockets in high points in strata recognized as

oil strata; (b) drowning with water of a gas stratum capable of producing gas in commercial quantities; (c) underground waste; (d) the permitting of any natural gas well to wastefully burn; (e) the wasteful utilization of such gas; (f) burning flambeau lights, except when casing head gas is used in same; provided, not more than four may be used in or near the derrick of a drilling well, and (g) the burning of gas for illuminating purposes between 8 o'clock a. m. and 5 o'clock p. m., unless the use is regulated by meter.

Waste, Leaks. Protection against Water.

ARTICLE 2. Whenever natural gas in such quantity or quantities, in a gas bearing stratum known to contain natural gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste and all such strata shall be adequately protected from infiltrating waters. All operators, contractors, or drillers, pipe line companies, gas distributing companies drilling for or producing crude oil or natural gas or piping oil or gas for any purpose shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil and gas, or both, in drilling and producing operations, storage or in piping or distributing and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers or pipes.

Duties of R. R. Commission. Regulations.

ARTICLE 3. It shall be the duty of the Railroad Commission to make and enforce rules and regulations for the conservation of oil and gas; it shall have authority to prevent the waste of oil and gas in drilling and producing operations and in the storage, piping and distribution thereof, and to make rules and regulations for that purpose; it shall be its duty to require dry or abandoned wells to be plugged in such way as to confine oil, gas and water in the stratas in which they are found and to prevent them from escaping into other stratas, and to establish rules and regulations

for that purpose. It is empowered to establish rules and regulations for the drilling of wells and preserving a record thereof, and it shall be its duty to require such wells to be drilled in such manner as to prevent injury to the adjoining property, and to prevent oil and gas and water from escaping from the stratas in which they are found into others stratas, and to establish rules and regulations therefor; it shall be its duty to establish rules and regulations for shooting wells and for separating oil from gas; it shall have authority to require records to be kept and reports made by oil and gas drillers, operators and pipe line companies and by its inspectors; it is authorized to do all things necessary for the conservation of oil and gas whether here especially enumerated or not, and to establish such other rules and regulations as will be necessary to carry into effect this Act and to conserve the oil and gas resources of the State.

Pipe Line Expert. Deputy Supervisors.

ARTICLE 4. It shall be the duty of the pipe line expert provided for in section 11, chapter 30, of the Acts of 1917, to be the supervisor for the Railroad Commission in enforcing its rules and regulations. The Railroad Commission may appoint such deputy supervisors as may be necessary. It shall have the authority to increase the salary of the supervisor to a sum not exceeding \$5,000.00 per annum and to fix the salaries of the deputies at not exceeding \$3,600.00 per annum, all salaries and other expenses of the administration and enforcement of this Act shall be paid out of the funds created in chapter 30 of the Acts of 1917, and in the manner therein provided. It shall be the duty of the supervisor and his deputies to supervise the plugging of all abandoned wells and the shooting of wells and to conform to the rules and regulations of the Railroad Commission, dealing with the production and conservation of oil and gas.

Certificate Required from Pipe Line Company.

ARTICLE 5. Owners or operators of gas wells shall, before connecting with any oil or gas pipe lines, secure from the Railroad Commission a certificate showing compliance with the oil and

gas conservation laws of the State and conservation orders of the Railroad Commission. Pipe line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish certificate from the Railroad Commission that the conservation laws of the State have been complied with, provided this Act shall not prevent a temporary connection with any well or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State.

Books to Be Open to Stockholders.

ARTICLE 6. It is hereby made the duty of all owners or operators of oil and gas wells to keep books showing the amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property and the disbursements made in connection with or for the benefit of such business which books shall be kept open for inspection of the Railroad Commission or any accredited representative thereof; and of any stockholder or shareholder in said business and any owner or operator refusing to comply with the provisions of this article shall be subject to the penalties imposed by this Act.

Double Penalties Imposed.

ARTICLE 7. In addition to any penalty that may be imposed by the Railroad Commission for contempt, any firm, person, corporation or any officer, agent or employee thereof, directly or indirectly violating the provisions of this Act or the orders or regulations of the Railroad Commission made in pursuance thereof, shall be subject to a penalty of not more than five thousand (\$5,000.00) dollars, to be recovered in any Court of competent jurisdiction, such suit to be brought in the name of the State of Texas, and to be instituted and conducted by any county or district attorney, on the direction of the Railroad Commission. Each day that such violation continues shall be considered a separate offense.

Articles 8, 9, 10, contain the repealing clause, the emergency clause and the reservation as to parts of the Act being held unconstitutional. Approved March 31, 1919, Reg. Sess. p. 285.

The last clause of section 7 is an innovation in modern legislation, attempting to evade the Bill of Rights as to second trials after one acquittal or conviction and the inhibition against cruel and unusual punishments. If literally enforced it might confiscate all the assets of the richest companies for trifling noncompliance with the regulations.

SENATE SUBSTITUTE BILL No. 36.

Passed at the Second Called Session, Thirty-sixth Legislature.

Be it enacted by the Legislature of the State of Texas:

Operators to Keep Books and Make Reports to the Commission.

SECTION 1. It is hereby made the duty of all owners and operators of oil and gas wells to keep books, showing accurately the amount of stock sold and unsold and amount of promotion money paid, amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business; which books shall be kept open for the inspection of the Railroad Commission or any accredited representative thereof, and of any stockholder or shareholder or royalty owner in said business, and shall report such information to the Railroad Commission of Texas for its information, when required by the Commission to do so. Any person, firm, partnership, joint stock association, corporation or other organization, domestic or foreign, operating wholly or partially within this State, acting as principal or agent for another for the purpose of drilling, owning or operating any oil or gas well, or owning or controlling leases of oil and mineral rights, or the transportation of oil or gas by pipe line, shall immediately file with the Railroad Commission of Texas, at Austin, the name of the company or organization, giving the name and postoffice address of the organization, the plan under which it

was organized, and the names and postoffice addresses of the trustee or trustees thereof, and the names and postoffice addresses of the officers and directors. Any person, firm, joint stock association, corporation or other organization, or the agent thereof, refusing to comply with any of the provisions of this section, shall be subject to all the fines and penalties imposed by article 7, chapter 155, Acts of the regular session of the Thirty-sixth Legislature, approved March 31, 1919.

Sections 2, 3 and 4 direct from what fund the expenses of the commission are to be paid: Declare the Act to be cumulative to all prior legislation and that an emergency exists. Approved July 25, 1919, special session p. 79.

The above Act, although mostly confined in its terms to wells under corporate management, is broad enough to reach operations conducted by private individuals.

OIL AND GAS CIRCULAR NO. 11.

CONSERVATION RULES AND REGULATIONS.

Rules 1-35 prescribed July 26, 1919.

Rule 1. *Waste Prohibited*.—Natural gas and crude oil or petroleum shall not be produced in the State of Texas in such manner and under such conditions as to constitute waste.

Rule 2. *"Waste" Defined*.—The term "waste" as above used, in addition to its ordinary meaning, shall include:

(a) Escape of natural gas in commercial quantities into the open air from a stratum recognized as a natural gas stratum; but this is not intended to have application to gas pockets in high points in strata recognized as oil strata;

(b) Drowning with water of a gas stratum capable of producing gas in commercial quantities;

(c) Underground waste;

(d) The permitting of any natural gas to wastefully burn;

(e) The wasteful utilization of such gas;

(f) Burning flambeau lights except when casing head gas is used in same; provided, not more than four may be used in or near the derrick or a drilling well, and

(g) The burning of gas for illuminating purposes between eight o'clock a. m. and five o'clock p. m., unless the use is regulated by meter.

Rule 3. *Gas to Be Confined—Strata to Be Protected.*—Whenever natural gas in commercial quantities, in a well defined gas-bearing stratum known to contain natural gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its origin stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. This rule shall not apply to the Gulf Coast oil fields of Texas; nor shall this rule, as to the fields in which it applies, prevent the drilling deeper in search for oil in any well, if such drilling shall be prosecuted with diligence and if said gas be confined in its stratum and protected as aforesaid upon completion of such well; but at any time after the expiration of seven (7) days from the penetration of such gas-bearing stratum, even though such drilling deeper is being prosecuted with diligence, the Railroad Commission, or its Conservation Agent or any deputy of the latter, may require such gas-bearing stratum to be cased off and so protected, if in their judgment it shall be reasonably necessary and proper to do so.

Rule 4. *Approved Methods of Preventing Waste to Be Used.*—All operators, contractors or drillers, pipe line companies, or gas distributing companies, drilling for or producing crude oil or natural gas, or piping oil or gas for any purpose, shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil and gas, or both, in drilling and producing operations, storage, or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers or pipes.

Rule 5. *"Commercial Quantities" Defined.*—Any gas stratum showing a well defined gas sand and producing gas shall be considered capable of producing gas in commercial quantities, and any gas coming from such a stratum or sand shall be considered a commercial quantity, and such stratum or sand shall be protected the same as under rule 3.

Rule 6. *Gas to Be Taken Ratably.*—Whenever the full production from any common source of supply of natural gas in this State is in excess of the market demands, then any person, firm or corporation having the right to drill into and produce gas from any such common source of supply may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply, having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Railroad Commission of Texas may, by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable.

Rule 7. *Commission Will Regulate the Taking of Natural Gas.*—The Railroad Commission of Texas will, as occasion arises, prescribe rules and regulations for the determination of the natural flow of any well or wells in this State, and will regulate the taking of natural gas from any and all common sources of supply within the State so as to prevent waste, protect the interests of the public and of all those having a right to produce therefrom; and to prevent unreasonable discrimination in favor of one common source of supply as against another.

Rule 8. *Gas to Be Metered.*—All gas produced from the deposits of this State when sold shall be measured by meter, and each gas well, or the entire property on which it is located, shall be equipped with such meter.

Rule 9. *Notice of Intention to Drill, Deepen or Plug.*—Notice shall be given to the Railroad Commission of Texas or its agents of the intention to drill, deepen or plug any well or wells and of the exact location of each and every such well. In case of drilling, notice shall be given at least five (5) days prior to the commencement of drilling operations.

Notice of intention to plug must be given at least twenty-four (24) hours prior to beginning of plugging, and must be accompanied by a complete log of the well, on forms prescribed by the Railroad Commission of Texas.

Blanks for notification and reports can be obtained by applica-

tion to the Railroad Commission of Texas or its conservation agent in the field.

Rule 10. *Plugging Dry and Abandoned Wells.*—(a) All abandoned or dry wells shall immediately be plugged according to the following rules:

(b) *Manner of Plugging.*—All dry or abandoned wells must be plugged by confining all oil, gas or water in the strata in which they occur, by the use of mud-laden fluid, or by some other method approved by the Commission. In case of cable-drilling, cement and plugs may be used.

(c) *Notice of Intention to Plug.*—Before plugging dry and abandoned wells, notice shall be given to the Railroad Commission of Texas or its conservation agent in the field, and to all available adjoining lease and property owners, and representatives of such lease and property owners may, in addition to the oil and gas conservation agent of the commission, be present to witness the plugging of these wells if they so desire, but plugging shall not be delayed because of failure or inability to deliver notices to adjoining lease or property owners.

Rule 11. *Log and Plugging Record to Be filed with Commission.*—The owner or operator shall, upon the completion of any well, file with the Railroad Commission of Texas a complete record or log of the same, duly signed and sworn to, upon blanks to be furnished by the commission upon application; and upon plugging any well for any cause whatsoever, a complete record of the plugging thereof shall be made out and duly verified on blanks to be furnished by the Commission.

Rule 12. *Proper Anchorage to Be Laid.*—Before any well is begun in any field where it is not known that high pressure does not exist, proper anchorage shall be laid so that the control casing-head may be used on the inner string of casing at all times, and this type of casing-head shall be kept in constant use unless it is known from previous experience and operations on wells adjacent to the one being drilled that high pressure does not exist or will not be encountered therein.

Rule 13. *Equipment for Conserving Natural Gas Shall Be Provided Before "Drilling-in."*—In all proven or well-defined gas fields, or where it can reasonably be expected that gas in com-

mercial quantities will be encountered, adequate preparations shall be made for the conservation of gas before "drilling-in" any well.

Rule 14. *Separate Slush Pit to Be Provided.*—Before commencing to drill a well, a separate slush pit or sump hole shall be constructed by the owner, operator or contractor for the reception of all pumpings from clay or soft shale formations in order to have the same on hand for the making of mud-laden fluid.

Note.—In order to avoid freezing casings, operators are cautioned not to allow sand or lime to be mixed with clay or soft shale pumpings.

Rule 15. *Wells Not to Be Permitted to Produce Oil and Gas from Different Strata.*—No wells shall be permitted to produce both oil and gas from different strata unless it be in such manner as to prevent waste of any character to either product and in accordance with rule 3.

Rule 16. *Strata to Be Sealed Off.*—No well shall be drilled through or below any oil, gas or water stratum without sealing off such stratum or the contents thereof, after passing through the sand, either by the mud-laden fluid process or by casing and packers, regardless of volume or thickness of sand; provided this rule shall be subject to rule 3 as that rule relates to natural gas.

Rule 17. *Density of Mud-Fluid Where Well Containing Water is Drilled Into Oil or Gas-Producing Strata.*—No operator shall drill a well into a known oil or gas-producing sand with water from a higher formation in the hole, or with a sufficient head of water introduced into the hole to prevent gas blowing to the surface. The well shall either be allowed to blow until the same has been drilled-in or it shall be drilled in under a head of fluid consisting, when necessary, of not less than 25 per cent mud; but in no case shall gas be allowed to blow for a longer period than three (3) days after completion of well. Mud-laden fluid used for protecting oil and gas-bearing sands in upper formations while oil or gas is being produced from deeper formations should have a density of not less than 25 per cent mud and should contain not less than 28 per cent mud.

Rule 18. *Mud-laden Fluid to Be Applied in Pulling or Redeeding Casing.*—No outside casing from any oil or gas well in

an unexhausted oil or gas field, shall be pulled without first flooding the well with mud-laden fluid behind the inside string of casing, after unseating the casing, and as casing is withdrawn, well shall be kept full to top with said mud-laden fluid and same shall be left in the hole; and said mud-laden fluid shall be so applied as to effectively seal off all fresh or salt water strata, and all oil or gas strata not being utilized.

Rule 19. *Mud-laden Fluid—When to Be Applied to Completed Wells.*—When necessary (or in any event when ordered by the Railroad Commission of Texas) to seal off any oil, gas or water sand, casing shall be seated in mud-laden fluid; and concerning wells already drilled, the operator shall, upon the order of the Railroad Commission of Texas, raise any string or strings of casings and reseal them in mud-laden fluid when it is thought advisable to do so in order to avoid existing underground waste, pollution or infiltration.

Rule 20. *Fresh Water to Be Protected.*—Fresh water, whether above or below the surface, shall be protected from pollution, whether in drilling or plugging.

Rule 21. *Separating Devices.*—Where oil and gas are found in the same stratum and it is impossible to separate the one from the other, the operator shall, upon being so ordered by the Railroad Commission of Texas, install a separating device of approved type, which shall be kept in place and used as long as necessity therefor exists, and after being installed, such device shall not be removed, nor the use thereof discontinued, without the consent of the Railroad Commission of Texas.

Rule 22. *Gas Wells Not to Produce from Different Sands at the Same Time Through the Same String of Casing.*—No gas well shall be permitted to produce gas from different levels, sands or strata at the same time through the same string of casing, and when gas upon being found is not needed for immediate use, the same shall be confined in its original stratum until such time as the same can be produced and utilized without waste, and in confining gas to its original place the mud-laden fluid process shall be used unless the character of the formation involved is sufficiently ascertained and understood to know that the casing and packer method with Braden-head attachment can be safely

applied and competently used, and in the use of the casing, packing and Braden-head method, separate strings of casing shall be run to each sand.

Rule 23. *Shooting of Wells*.—(a) All shooting of wells shall be under rules and regulations of the Railroad Commission of Texas.

(b) *Wells Not to Be Shot Into Salt Water*.—No well shall be so shot as to let in salt water or other foreign substance injurious to the oil or gas sand.

(c) *Reports to Be Made to the Railroad Commission of Texas*.—Reports shall be made to the Railroad Commission of Texas on all wells shot, showing the condition of the well before and after shooting, including the size of the shot, sand or sands shot, production before and after shooting, per cent of water in well before and after shooting.

(d) *Damaged Wells to Be Abandoned*.—In case irreparable injury is done to the wells, or to the oil or gas sand or sands by shooting, the well shall immediately be abandoned and plugged as provided by rule No. 10.

(e) *Notice of Intention to Shoot*.—Notice of intention to shoot must be given the Railroad Commission of Texas, on blank form prescribe by it, at least two (2) days prior to shooting.

Rule 24. *Gauge to Be Taken—Reports to Commission*.—All oil and gas operators shall, between the first and tenth of each month, take the rock pressure of all wells producing natural gas which is being marketed, and shall forthwith report to the Railroad Commission of Texas, on gauge blanks furnished by the Commission.

Rule 25. *Production of Gas to Be Restrained to Fifty Per Cent of Potential Capacity*.—When the gas from any well is being used, the flow or production thereof shall be restrained to fifty (50) per cent of the potential capacity of the same; that is to say, in any day (24 hours) the well shall not be permitted to flow or produce more than one-half of the potential capacity thereof as shown by the last monthly gauge; provided, that this rule shall not apply to casing-head gas, and provided further that, in cases of emergency, greater production may be used after

special authority therefor has been secured from the Railroad Commission of Texas.

Rule 26. *Notification of Fires and Breaks or Leaks.*—All drillers, operators, pipe line companies, and individuals operating oil and gas wells or pipe lines shall immediately notify the Railroad Commission of Texas by letter of all fires which occur at oil or gas wells or oil tanks owned, operated, or controlled by them or on their property, and shall immediately report all tanks struck by lightning and any other fires which destroy crude oil or natural gas, and shall immediately report, in the manner heretofore described, any breaks or leaks in tanks or pipe lines from which oil or gas is escaping. In all reports of fires, breaks, or leaks in pipes, or other accidents of this nature, the location of the well, tank or line break shall be given, showing location by county and survey. The reports provided for under this rule shall only be required when the loss by fire, breaks or leaks or other accident is material and only as regards losses connected with production or transportation in this State over which the Railroad Commission of Texas has jurisdiction.

Rule 27. *Reports from Pipe Line Companies.*—The Railroad Commission of Texas will, from time to time, require oil and gas pipe line companies to make reports to the Commission showing wells connected with their lines during any month, the amount of production taken therefrom, names of parties from whom oil and gas are purchased, the amount of oil or gas purchased therefrom; and all oil and gas pipe line companies shall, in addition to the other reports required by the rules of the Commission, furnish to the Commission duplicates of all reports made to the State Comptroller under the oil and gas gross production tax laws. The Commission will, in case of over-production or for any other reason which it deems urgent, require oil or gas pipe line companies to furnish daily reports of the amount of oil or gas purchased or taken from different wells or parties.

Rule 28. *Pipe Line Companies—Connection with Oil or Gas Wells.*—Pipe line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish a certificate from the Railroad Commission of Texas that the conservation laws of the State have been complied with; provided, this

rule shall not prevent the temporary connection with any well or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State.

Rule 29. *Certificates—Showing Compliance with Conservation Laws and Rules Prior to Connection.*—Owners or operators of oil or gas wells shall, before connecting with any oil or gas pipe line, secure from the Railroad Commission of Texas a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the Commission; provided that this rule shall not prevent temporary connection with pipe lines in order to take care of production until opportunity shall have been given for securing such certificate; provided, further, that the owners or operators of such wells shall, in a known or proven field, make application for such certificate in anticipation of production.

Rule 30. *Drilling Records to Be Kept.*—All operators, contractors, or drillers shall keep at each well, while drilling same, accurate records of the drilling, re-drilling, or deepening of all such wells, showing all formations drilled through, casing used, and other information in connection with drilling and operation of the property, and any and all of this information shall be furnished to the Railroad Commission of Texas upon request, or to any conservation agent of the Commission.

Rule 31. *Conservation Agents to Have Access to All Wells and All Well Records.*—Conservation agents of the Railroad Commission of Texas shall have access to all wells and to all well records, and all companies, contractors, or drillers, shall permit any conservation agent of the Commission to come upon any lease or property operated or controlled by them and to inspect any and all wells and the records of said well or wells, and to have access at all times to any and all wells and any and all records of said wells. Provided, that information so obtained by conservation agents shall be considered official and confidential information and shall be reported only to the Commission.

Rule 32. *Books to Be Kept—Reports to Be Made.*—All owners and operators of oil and gas wells in this State shall keep books

showing accurately the amount of stock sold and unsold and amount of promotion money paid, amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business; which books shall be kept open for the inspection of the Railroad Commission of Texas or any accredited representative thereof, and of any stockholder or shareholder or royalty owner in said business, and shall report such information to the Railroad Commission of Texas for its information, when required by the Commission to do so. Any person, firm, partnership, joint stock association, corporation or other organization, domestic or foreign, operating wholly or partially within this State, acting as principal or agent for another, for the purpose of drilling, owning or operating any oil or gas well, or owning or controlling leases of oil and mineral rights, or the transportation of oil or gas by pipe line, shall immediately file with the Railroad Commission of Texas, at Austin, the name of the company or organization, giving the name and postoffice address of the organization, the plan under which it was organized, and the names and postoffice addresses of the trustee or trustees thereof, and the names and postoffice addresses of the officers and directors.

Rule 33. *Notice to Contractors, Drillers and Others to Observe Rules.*—All contractors and drillers carrying on business or doing work in the oil or gas fields of the State, as well as leaseholders, land owners and operators generally, shall take notice of and are hereby directed to observe and apply the foregoing rules and regulations; and all contractors, drillers, land owners and operators will be held responsible for infractions of said rules and regulations.

Rule 34. *Conservation Agents—Co-operation with Federal Inspectors.*—All conservation agents appointed by the Railroad Commission of Texas shall co-operate with and invite the co-operation of the oil and gas inspectors of the United States Bureau of Mines of the Department of the Interior.

Rule 35. *Conservation Agents—To Enforce These Rules.*—All conservation agents appointed by the Railroad Commission

of Texas shall be governed by, and are charged with the enforcement of, the law and these rules and regulations.

This order take effect and be in force on and after July 26, 1919, until amended or canceled by this Commission.

ALLISON MAYFIELD, Chairman;
EARLE B. MAYFIELD,
CLARENCE E. GILMORE,
Commissioners.

E. R. McLEAN, Secretary.

SUPPLEMENT TO OIL AND GAS CIRCULAR NO. 11.

Adopted November 26, 1919.

Rule 36. No pipe line, whether a common carrier or not, shall be used to transport oil or gas from any tract of land within this State, except to another tract immediately adjoining, without a permit from the Railroad Commission of Texas. Application for such permit shall be made upon the form prescribed by the Railroad Commission of Texas, and such permit will be granted when the Railroad Commission of Texas is satisfied, from such application and the evidence in support thereof, and its own investigation, that the proposed line is, or will be, so laid, equipped, and managed as to reduce to a minimum the possibility of waste.

Such permit, if granted, shall be valid for only one year, and shall be revocable at any time after hearing had on ten days notice, if, in the judgment of the Railroad Commission, any line is so unsafe or so improperly equipped or managed as to be likely to cause waste; or, if in the judgment of the Railroad Commission, the owner or operator of such line, in the operation thereof, is violating the Acts of the Thirty-sixth Legislature, chapter 155, being an Act to conserve the oil and gas resources of the State of Texas, or any rule or regulation of the Railroad Commission, enacted under or in pursuance of said Act.

This rule shall take effect immediately as to any pipe lines not now constructed, or under construction; and shall take effect fifteen days from date of this order as to any pipe lines now con-

structed or operated; and thirty days from date of this order as to any pipe lines now under construction.

Rule 37. No well for oil or gas shall hereafter be commenced nearer than three hundred (300) feet to any other completed or drilling well on the same or adjoining tract or farm; and no well shall be drilled nearer than one hundred and fifty (150) feet to any property line; provided, that the Commission, upon petition filed, showing good cause, and provided that no injustice will be done, may, after hearing had, upon notice to adjoining tract owners or lessees, allow drilling within shorter distances than as above described. Rule 37 shall not for the present be enforced within the developed and defined oil fields known as the Gulf Coast Fields.

Rule 38. All maps or sketches of any kind of any separate lease or tract of land, filed with the Oil and Gas Department of the Railroad Commission, must be drawn on a scale of four hundred (400) feet to one inch, unless the area involved is less than two acres, when the scale must be forty (40) feet to one inch, or unless the Commission specially grants permission that maps furnished may be drawn on another scale.

Rule 39. (1) All permanent oil tanks or battery of tanks must be surrounded by a dike or ditch of at least the capacity of the tank or battery of tanks.

(2) No flow tank, unless it is entirely buried, or other oil tank of any size, shall hereafter be placed nearer than 150 feet to any derrick, rig, building, power plant or boiler of any description, except where topography does not permit.

(3) No field working tank having a capacity of 5,000 barrels or more shall hereafter be built nearer than 200 feet (measured from shell to shell) to any other like tank or tanks.

(4) No battery of field storage tanks shall hereafter be placed nearer than 20 feet to any other battery.

(5) Printed signs reading "Dangerous, No smoking Allowed," or similar words, shall be posted in conspicuous places on each producing lease or farm.

(6) All lessees' premises shall be kept clear of high grass, weeds and combustible trash, within a radius of 100 feet around an oil tank, tanks or producing wells.

(7) Open earthen storage for merchantable oil is hereafter prohibited, except when the Commission grants special permission in order to meet an unforeseen emergency. Where such storage is now in use, it must be discontinued within a reasonable time.

(8) Swabbing into open pits is prohibited except when testing a well or cleaning out and such swabbing shall not continue for a longer period than ten days, without permission from the Railroad Commission.

(9) All oil tanks, where there is a gas hazard, shall be well covered and provided with adequate gas vents.

(10) No forge or open light shall be placed inside the derrick of a well showing oil or gas.

(11) Boilers must be equipped with steam lines for fighting fire and must not be set nearer than 100 feet to any producing well.

(12) All oil and gas pipe lines laid upon or across a public road or highway must be buried to a reasonably safe depth.

(13) Wherever available and practicable, electric light and power shall be installed in congested drilling areas, upon order of the Commission.

Rule 40. *Vacuum Pumps Prohibited.*—The use of vacuum pumps or other devices for the purpose of extracting oil or gas, except casing-head gas where the same is utilized, from any well by the vacuum process, is prohibited, except in depleted or practically depleted fields.

Rules 39 and 40 effective May 1, 1920.

REGULATING PIPE LINES.

S. B. No. 68.]

CHAPTER 30.

Acts of the Thirty-fifth Legislature, Regular Session.

Be it enacted by the Legislature of the State of Texas:

Pipe Line Companies Are Common Carriers Except When Limited to Their Own Product.

SECTION 1. Every person, firm, corporation, limited partnership, joint stock association or association of any kind whatever;

M. O. R.—35.

(a) Owning, operating or managing any pipe line or any part of any pipe line within the State of Texas for the transportation of crude petroleum to or for the public for hire, or engaged in the business of transporting crude petroleum by pipe line; or

(b) Owning, operating or managing any pipe line or any part of any pipe line for the transportation of crude petroleum to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over or under any public road or highway, or in favor of whom the right of eminent domain exists; or

(c) Owning, operating or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public, for hire, of crude petroleum, and which said pipe line or pipe lines is or may be constructed, operated or maintained across, upon, along, over or under the right of way of any railroad corporation or other common carrier required by law to transport crude petroleum as a common carrier; or

(d) Owning, operating or managing or participating in ownership, operation or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or part of any pipe line, for the transportation from any oil field or place of production within the State of Texas to any distributing, refining or marketing center or reshipping point thereof, within this State, of crude petroleum bought of others;

Is hereby declared to be a common carrier and subject to the provisions hereof. But the provisions of this Act shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as above defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system.

Involved Language Apparently Limiting Section 1.

SEC. 2. It is declared that the operation of those pipe lines, to which this Act applies, for the transportation of crude petroleum, in connection with the purchase or purchase and sale of such

crude petroleum, is a business in the mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe line of the class subject to this Act, to transport the crude petroleum so bought or sold shall not be conducted, unless such pipe line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the Railroad Commission of Texas. It shall be the duty of the Attorney General to enforce this provision by injunction or other adequate remedy.

Right of Way.

SEC. 3. The right to lay, maintain and operate pipe lines, together with telegraph and telephone lines incidental to and designated for use only in connection with the operation of such pipe lines along, across or under any public stream or highway in this State, is hereby conferred upon all persons, firms, limited partnerships, joint stock associations, or corporations coming within any of the definitions of common carrier pipe lines as hereinbefore made. Any person, firm, limited partnership, joint stock association, or corporation may acquire the right to construct pipe lines and such incidental telephone and telegraph lines along, across or over any public road or highway in this State, by filing with the Railroad Commission an acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the rights so acquired it shall be and become a common carrier pipe line, subject to the duties and obligations conferred or imposed in this Act. This right to run along, across or over any public road or highway, as before provided for can only be exercised upon condition that the traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof to be subject also to the supervision of the county commissioners Court or other proper local authority. And provided, that in the exercise of the privileges herein conferred such

pipe lines shall compensate the county or road districts, respectively, for any damage done to such public road, in the laying of pipe lines, telegraph or telephone lines, along or across the same; and nothing herein shall be construed to grant any pipe line company the right to use any public street or alley of any incorporated city or town, except by express permission from the city or governing authority thereof; and nothing herein shall be construed to permit any company to use any street or alley of an unincorporated town, except by express permission of the commissioners Court of the county in which such town is situated.

Regulations. Rates. Hearings. Complaints.

SEC. 4. The Railroad Commission shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum by such common carriers in this State, and for the use of storage facilities necessarily incident to such transportation, and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject. No order establishing or prescribing rates, rules and regulations shall be made except after hearing and at least ten days and not more than thirty days notice to the person, firm, corporation, partnership, joint stock association, or association owning or controlling and operating the pipe line or pipe lines affected. In the event any rate shall be filed by any pipe line and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

Exchange of Tonnage. Commission's Orders Prima Facie Valid.

SEC. 5. Every common carrier as above defined shall exchange

crude petroleum tonnage with each like common carrier and the Commission shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the Commission; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on such pipe line. No carrier shall be required to receive or transport any crude petroleum except such as may be marketable under rules and regulations to be prescribed by the Commission, which they are hereby empowered and required to prescribe. The Commission is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. It is *provided*, however, that the recital herein of particular powers on the part of said Commission shall not be construed to limit the general powers conferred by this Act. Until set aside or vacated by some decree or order of a Court of competent jurisdiction, all orders of the Commission as to any matter within its jurisdiction shall be accepted as *prima facie* evidence of their validity.

Tariffs, Monthly Reports. Power to Hear Complaints.

SEC. 6. Such common carriers of crude petroleum shall make and publish their tariffs under such rules and regulations as may be prescribed by said Commission, and the Commission shall require them to make reports and may investigate their books and records kept in connection with such business. The Commission shall require of such common carrier pipe lines monthly reports, duly verified under oath, of the total quantities of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the Commission to the reports as to stock of crude petroleum on hand of any particular pipe line; but the Commission in its discretion may make public the aggregate amounts held by all the pipe lines making such

reports, and of their aggregate storage capacity. The Commission shall have the power and authority to hear and determine complaints, to require attendance of witnesses, pay their expenses out of the fund herein created, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

Discrimination Forbidden. 3000 Barrel Limit.

SEC. 7. No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under same or similar circumstances in the transportation of crude petroleum; nor shall there be any discrimination in the transportation of crude petroleum produced or purchased by itself, directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum produced or purchased by itself, directly or indirectly, and handled through its facilities. No such carrier in such operations shall directly or indirectly charge, demand, collect or receive from anyone a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the Commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the Commission. When there shall be offered for transportation more crude petroleum than can be immediately transported the same shall be equitably apportioned. The Commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipment from any person, firm, corporation or association of persons, exceeding three thousand barrels of petroleum in any one day.

Waste.

SEC. 8. The Commission, when necessary, shall make and enforce rules and regulations either general in their nature or

applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property.

Penalties.

SEC. 9. Any common carrier as herein defined who shall violate any provision of this Act or who shall fail to perform any duty herein imposed or any valid order of the Commission when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense, such penalty to be recoverable at suit of the Attorney General of the State of Texas in the name of the State and for its use. Such penalty may also be recovered by and for the use of any person, corporation or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of party aggrieved and may be maintained in any court of proper jurisdiction, having due regard to the ordinary statutes of venue. For the wilful violations of the provisions herein forbidding discrimination on the part of common carriers it is hereby provided that the owners, officers, agents or employees of such carriers who may be guilty thereof shall be deemed guilty of a misdemeanor, each violation of such provision shall be deemed a separate offense and upon conviction thereof the party violating same shall be fined in a sum of not less than fifty dollars nor more than one thousand dollars and may be further punished by confinement in the county jail for not less than ten days, nor more than six months.

Discrimination.

SEC. 10. Subject to the provisions of this Act and the rules and regulations which may be prescribed by the Commission, every such common carrier shall receive and transport crude petroleum delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination.

Expert and Other Assistants. Special Tax.

SEC. 11. It shall be the duty of the Commission to employ an *expert*, who shall gather information and assist the Commission in the performance of its duties under this Act. The salary of this expert shall be at the rate of thirty-six hundred dollars per annum, payable in equal monthly installments. And the Commission shall employ *such other assistants as may be necessary*. These salaries and expenses and the expenses of the hearings and investigations conducted by said Commission *shall be paid out of* a fund to be derived from a tax of one-twentieth of one per cent of the *market value* of crude petroleum produced within this State, *which tax is hereby levied*, and which tax shall be in addition to and collected in the same manner as the *present gross receipts production tax on crude petroleum*. Producers of crude petroleum are hereby required to make reports of production in the same manner and under the same penalties as for the gross production tax. The tax thus collected shall be paid into the State Treasury as other revenue, and shall be paid out in warrants as other State funds. Any yearly excess of the tax over and above the requirements of the Commission shall become a part of the general revenue of the State and any deficit shall be made up out of the general revenue of the State.

Section 12 makes a \$5000 appropriation. Sections 13-15 provide for payment of salaries and expenses, declare the Act to be cumulative and anticipate the holding that parts of the Act may be held unconstitutional. The circular contains regulations under the Act and the rates of transportation. Regular Sess. 1917 p.

CHAPTER 83.

STATE STATUTES.

None of the States apparently have what can be called a code of oil and gas law. The nearest approach to it is California where a special department of petroleum and gas has been created. Several of the States have Acts compelling the plugging of wells, prohibiting waste of gas, requiring public record of logs and concerning transportation of gas in pipe lines. Some have special statutes as to the recording of oil leases and their surrender or forfeiture. Such statutes we have endeavored to collect under the name of the State. Almost every State has an inspection law for power and burning oils. Inspection of oil and mechanics liens are not within the scope of this book. The Blue Sky Laws are digested under chapter 85 on page 811.

ALASKA.

License Tax Imposed on Miners.

SECTION 1. That any person, firm or corporation prosecuting or attempting to prosecute, any of the following lines of business in the Territory of Alaska shall apply for and obtain a license, and pay for said license, for the respective lines of business, as follows: Act of May 1, 1919, Laws p. 90.

Income Defined. Deductions.

12th: Mining: One per cent of the net income in excess of five thousand dollars, By "net" income is meant the cash value of the output of the mine less operating expenses, repairs and betterments actually made, and royalties actually paid, and

all taxes paid under section 2569 of the Compiled Laws of Alaska.

Provided, that the lessor of any mine operated under a lease shall be deemed to be engaged in mining within the provisions of this Act and the royalties, less the cost of collecting the same, received by him, shall be deemed to be the net income within the provisions of this Act.

No deduction shall be made on account of depreciation of machinery, interest on bonds or money borrowed, or other taxes paid. By "mining" is meant any operation by which valuable metals, ores, minerals or marketable stone is extracted from the earth. *Id.*

CALIFORNIA.

The California Act was passed in 1915, amended in 1917 and 1919. The following is the text as it now stands. The title fairly indicates its intended scope.

TITLE OF ACT.

An Act establishing and creating a department of the State Mining Bureau for the protection of the natural resources of petroleum and gas from waste and destruction through improper operations in production;

Providing for the appointment of a State oil and gas supervisor; prescribing his duties and powers;

Fixing his compensation;

Providing for the appointment of deputies and employees;

Providing for their duties and compensation;

Providing for the inspection of petroleum and gas wells;

Requiring all persons operating petroleum and gas wells to make certain reports;

Providing procedure for arbitration of departmental rulings;

Creating a fund for the purposes of the Act;

Providing for assessment of charges to be paid by operators and providing for the collection thereof; and

Making an appropriation for the purposes of this Act.

Department of Petroleum and Gas Created. Supervisors.

SEC. 1. A separate department of the State Mining Bureau is hereby established and created to be known as the department of petroleum and gas. Such department shall be under the general jurisdiction of the State mineralogist. He shall appoint a supervisor who shall be either a competent engineer or geologist experienced in the development and production of petroleum or a competent oil operator, having had not less than five years' actual experience in California oil fields, and who shall be designated the "State oil and gas supervisor," and whose term of office shall be four years from the date of his appointment. Act of June 10, 1915. Amended May 25, 1919. In effect July 25, chap. 536.

Salaries. Assistants.

Sec. 2. For his services in the general supervision of said department, the State mineralogist shall receive as compensation one thousand four hundred dollars annually, which shall be in addition to his compensation fixed in section 2 of the Act of June 16, 1913, relating to the State Mining Bureau.

The secretary of the State Mining Bureau shall receive for his services in connection with the department of petroleum and gas, a sum not to exceed six hundred dollars annually, which sum shall be in addition to his compensation paid from the funds of the State Mining Bureau.

The supervisor shall receive an annual salary of six thousand dollars, and shall be allowed his necessary traveling expenses. The State mineralogist may, at the request of the State oil and gas supervisor, and subject to the civil service laws of the State, appoint one chief clerk at a salary of not to exceed one thousand eight hundred dollars annually; twelve office assistants or stenographers each at a salary not to exceed one thousand two hundred dollars annually; four geological draftsmen each at a salary not to exceed one thousand five hundred dollars annually; four petroleum engineers each at a salary not to exceed two thousand four hundred dollars annually; twelve inspectors

each at a salary not to exceed one thousand eight hundred dollars annually.

The additional salary herein authorized to be paid to the State mineralogist and the Secretary of the State Mining Bureau and the salaries of the supervisor and of the deputies, clerks, stenographers, assistants and other employees shall be paid out of the funds hereinafter provided for at the times and in the manner that salaries of other State officers and employees are paid. Act 1917 amending Act 1915.

Duties of Supervisor Enumerated.

Sec. 3. It shall be the duty of the State oil and gas supervisor so to supervise the drilling, operation and maintenance and abandonment of petroleum or gas wells in the State of California, as to prevent, as far as possible, damage to underground petroleum and gas deposits from infiltrating water and other causes and loss of petroleum and natural gas. Act 1915, p. 1404.

Duties of Deputies. Attorney.

Sec. 4. It shall be the duty of the State oil and gas supervisor to appoint one chief deputy and five field deputies, one for each of the districts hereinafter provided for, and prescribe their duties and fix their compensation, which shall not exceed four thousand dollars per annum for the chief deputy, and not to exceed three thousand six hundred dollars per annum for each field deputy. Such deputies shall serve during the pleasure of the supervisor. He shall also employ an attorney at a compensation not exceeding three thousand dollars per year, payable out of said fund. The supervisor and the deputies shall not be subject to the civil service Act. Act of 1919 amending Act of 1917 which amended Act of 1915.

Qualification of Deputies. Office to Be Kept Open.

Sec. 5. The chief deputy appointed by the supervisor shall be a competent engineer or geologist experienced in the development and production of petroleum; and each field deputy shall be either a competent engineer or geologist, experienced in the

development and production of petroleum, or shall be a competent and experienced oil operator, having had not less than five years actual experience in the oil fields of the State of California. At the time any field deputy is appointed, notice of such appointment shall be transmitted in writing to the board of commissioners of the district for which said deputy is appointed, which field deputy shall maintain an office in the district for which he is appointed convenient of access to the petroleum and gas operators therein. The office shall be open and the deputy shall be present at certain specified times, which shall be posted at such office. Act of 1919 amending Act of 1917 which amended Act of 1915.

Deputies to Collect Information.

Sec. 6. It shall be the duty of each deputy to collect all necessary information regarding the oil wells in the district, with a view to determining the presence and source of water in the oil sand, and to make all maps and other accessories necessary to determine the presence and source of water in the oil sands. This work shall be done with the view to advising the operators as to the best means of protecting the oil and gas sands, and with a view to aiding the supervisor in ordering tests or repair work at wells. All such data shall be kept on file in the office of the deputy oil and gas supervisor of the respective district. Act 1915, p. 1404.

Records Open to Inspection.

Sec. 7. The records of any and all operators, when filed with the deputy supervisor as hereinafter provided, shall be open to inspection to those authorized in writing by such operators, to the state officers, and to the board of commissioners hereinafter provided for. Such records shall in no case other than those hereinafter and in this section provided, be available as evidence in Court proceedings and no officer or employee or member of any board of commissioners shall be allowed to give testimony as to the contents of said records, except at such Court proceedings as are hereinafter provided for in the review of the deci-

sion of the State oil and gas supervisor, or a board of commissioners, or in any proceedings initiated for the enforcement of an order of the supervisor, or any proceeding initiated for the enforcement of a lien created by this Act, or any proceeding for the collection of the assessment levied under and pursuant to the provisions of this Act or in criminal proceedings arising out of such records, or the statements upon which they are based. Act 1915, p. 1404. Amended 1917, p. 1588.

Protection Against Water. Right of Appeal.

Sec. 8. It shall be the duty of the supervisor to order such tests or remedial work as in his judgment are necessary to protect the petroleum and gas deposits from damage by underground water, to the best interests of the neighboring property owners, and the public at large.

The order shall be in written form, signed by the supervisor, and shall be served upon the owner of the well, or the local agent appointed by such owner, either personally or by mailing a copy of said order to the post office address given at the time the local agent is designated, or if no such local agent has been designated, by mailing a copy of said order to the last known post office address of said owner, or if the owner be unknown by posting a copy of said order in a conspicuous place upon the property, and publishing the same in some newspaper of general circulation throughout the county in which said well is located, once a week for two successive weeks.

Said order shall specify the condition sought to be remedied and the work necessary to protect such deposits from damage from underground waters. For this purpose each operator or owner shall designate an agent, giving his post office address, who resides within the county where the well or wells are located, upon whom all orders and notices provided for in this Act may be served.

Whenever the supervisor or any deputy supervisor or inspector makes any written recommendation or gives any written direction concerning the drilling, testing or other operation in any oil or gas well drilled, in process of drilling or being abandoned, and the operator, owner or representative of either,

serves written notice, either personally or by mail, addressed to the supervisor or his deputy at his office in the district, requesting that a definite order be made upon such subject, the supervisor or his deputies shall, within five days after such notice, deliver a final written order on such subject matter in such manner and form that an appeal may be taken at once therefrom, to the board of oil and gas commissioners of the district created under this chapter. Act of 1919 amending 1917 which amended original section 8 of 1915.

Appeal from Supervisors Order.

Sec. 9. The well owner, or his or its local agent, may, within ten days from the date of the service of any order from the supervisor or his chief deputy or field deputy, file with the supervisor or his deputy in the district where the property is located, a written statement that the order is not acceptable, and that appeal from said order is taken to the board of commissioners of said district under the provisions of this chapter. Such appeal shall operate as a stay of any order issued under or pursuant to the provisions of this Act. Immediately upon the filing of such notice of appeal, the deputy supervisor of the district, as Secretary ex officio of the board of oil and gas commissioners, shall immediately call a meeting of said commissioners to hear and pass upon said appeal. The hearing upon said appeal before said district board of oil and gas commissioners, shall be de novo and at such place in the district as the commissioners may designate, and within ten days from the taking of such appeal; five days' notice in writing shall be given to the appellant of the time and place of such hearing, and for good cause the commissioners may postpone such hearing on the application of appellant, or the State oil and gas supervisor, or the field deputy in said district, for not exceeding five days. Act of 1919, amending Act of 1917 which amended 1915.

Division of State into Districts.

Sec. 10. For the purposes of this Act the State shall be divided into five districts, as follows:

District No. 1, including the counties of Los Angeles, Riverside, Orange, San Diego, Imperial and San Bernardino.

District No. 2, the county of Ventura.

District No. 3, including the counties of Santa Barbara, San Luis Obispo, Monterey, Santa Cruz, San Benito, Santa Clara, Contra Costa, San Mateo, Alameda and San Francisco.

District No. 4, including the counties of Tulare, Inyo and Kern.

District No. 5, including the counties of Fresno, Madera, Kings, Mono, Mariposa, Merced and all other counties in California not included in any of said other districts.

There shall be elected at the times and in the manner hereinafter provided, district oil and gas commissioners for each such districts, as follows:

For district No. 1, five; for district No. 2, five; for district No. 3, five; for district number 4, seven; for district No. 5, five.

Commissioners, How Elected.

Said district oil and gas commissioners shall be elected by vote of the companies, individuals, copartnerships or associations, who shall have been assessed, and whose names shall appear on the last record of assessments (next preceding such election) for and on account of the fund in this Act provided to be raised within said district respectively, said vote to be taken at a meeting to be held in each of said districts respectively, and on the third Monday in September of each year, such place and the time and details of such meeting to be fixed by the State oil and gas supervisor, and of which meeting at least two weeks' previous notice shall have been given by letter addressed to each of said persons, corporations, copartnerships and associations, entitled to vote as aforesaid, at his or its post office address or principal place of business.

At said meeting each of those entitled to vote as herein provided may be represented by one person holding the written authority of such voter to act for him at such meeting.

At said meeting each voter shall be entitled to one vote for each member of the board of district oil and gas commissioners who are required to be selected for such district. In addition thereto, in each district in which five commissioners are to be elected, each voter shall be entitled, for each one hundred dol-

lars, or fraction thereof, which said voter shall have paid in accordance with his assessment hereunder, to cast one vote for the two commissioners who are elected for three years; and in each district in which seven commissioners are to be elected, each voter shall be entitled, for each one hundred dollars, or fraction thereof, which such voter shall have paid in accordance with his last assessment hereunder, to cast one vote for the three commissioners who are elected for three years. In all subsequent elections the qualification of voters in the election of a commissioner shall be the same as in the election of the commissioner whose successor in office is being elected.

Said meeting shall select by ballot, by a majority vote of the votes represented, the number of persons as hereinbefore specified to act as district oil and gas commissioners for such district.

In any district entitled to seven commissioners, two shall be chosen for a term of one year, two for two years and three for three years. In any district entitled to five commissioners, one shall be chosen for a term of one year, two for two years and two for three years.

The chairman and Secretary of the meeting shall issue a written certificate to the State oil and gas supervisor, setting forth the result of such election, and the name and address of each of the persons elected at said meeting as the district oil and gas commissioners for said district and the term for which each has been elected. No person shall be eligible as a district oil and gas commissioner who is not a resident of the district for which he is elected, nor shall any person be eligible for such position who is not actually engaged in the business of oil or gas development or production, within the district.

Upon receipt of the certificate so made by the chairman and Secretary of any such meeting, the State oil and gas supervisor shall issue a certificate of election to the respective persons in said district named as the district oil and gas commissioners for said district, and for the periods of one, two or three years from and after the first Monday in October, 1917, as shall be shown in such certificate, and until their respective successors shall have been elected.

Meetings of Commissioners.

Within thirty days after their appointment by the State oil and gas supervisor, the district oil and gas commissioners for each district shall meet at a time and place within the district to be designated by the State oil and gas supervisor, and shall thereupon select one of the number as chairman.

The deputy supervisor of the district shall be ex officio Secretary of said board, and shall keep a record of its proceedings, and his office shall be the office of the commissioners.

Each board of commissioners may appoint one of its number as assistant Secretary who shall, in the absence of the Secretary keep the minutes of said board, and shall perform such further secretarial duties as the board, by resolution, may direct.

Employment of Attorney.

In case of any litigation in which any district board of oil and gas commissioners shall be a party, such board shall have full authority to employ a competent attorney for each such litigation, and to fix his compensation, either before or after his services shall be concluded, and said compensation shall, when certified by the chairman of said board and by the State board of control, be paid from the fund created by this chapter.

Expenses.

Said commissioners shall serve without compensation, except their necessary traveling expenses and other actual expenses incident to their office.

Stenographer.

In case of any hearing upon appeal before any board of district oil and gas commissioners, they shall have authority to employ a competent stenographer to take the testimony and proceedings, and in case either party shall take proceedings in the Superior Court by writ of certiorari, from any order or decisions of such board, it shall cause the stenographer so employed to make a full transcript of the testimony and proceedings be-

fore said board of commissioners, and three copies in addition to the original thereof. The original and one copy shall be for the use of said board of commissioners, and one copy shall be furnished to the State oil and gas supervisor, and one copy shall be furnished to the owner of the well in question. The cost and expense of employing any such stenographer, and the transcribing of his notes and making said copies shall be part of the expenses of said commissioners, and when certified by the chairman of said board, and audited by the State board of control, shall be paid from said fund.

Certificate of Expenses.

The traveling expenses of said commissioners, and all actual expenses incurred by or under the order of said commissioners in the hearing and determination and carrying out of orders appealed to them, shall be certified by the deputy supervisor and the chairman of such board of supervisors, to the State supervisor, and when audited by him and by the State board of control, shall be paid from said fund.

Annual Elections.

On the third Tuesday in September of each year at an hour and place in said respective districts to be fixed by the State oil and gas supervisor, and of which notices shall have been given as hereinbefore specified, the successor of each of the district oil and gas commissioners whose term of appointment shall expire that year, shall be elected and qualified in the manner and subject to the provisions hereinbefore set forth, and the term of each shall be for a period of three years from and after the first Monday in October next succeeding.

Recall.

All, either or any of the district oil and gas commissioners elected in any district may be recalled by the votes of a majority of the qualified votes of the district entitled to vote as to such commissioners, respectively. In case there shall be filed in the office of the State oil and gas supervisor, a written petition

signed by not less than forty percent of those entitled to vote as to the election of any commissioner or commissioners, asking the recall of such commissioner or commissioners, said State oil and gas supervisor shall, within ten days thereafter, order and give notice of, a special election in such district to fill the office or offices of the commissioner or commissioners named in said petition for recall; and shall cause notice to be given of said election in the manner and for the time required for regular election, and said notice shall fix the time and place of such election. At such election, the commissioner or commissioners named in such petition for recall shall be voted upon as though candidates for election for the unexpired portion of the term for which they, respectively, were originally elected, and any other candidate or candidates may, at the same time, be voted upon. It shall require a majority of all the qualified votes entitled to vote for such commissioners, respectively to constitute an election. In case less than a majority of all qualified votes shall be cast for any candidate, said recall shall be deemed to have failed as to the Commissioner concerning whose office such vote was taken; and in case such commissioner shall receive a majority of the votes said recall shall be deemed to have failed, and in either of such cases, such commissioner shall continue to serve until the expiration of his term, as though no such special election had been held. But in case any person other than such commissioner shall receive a majority of the votes for such unexpired term, then such recall shall become effective and the office of the commissioner so recalled shall be vacant and upon written certificate of such election being filed with the State oil and gas supervisor, the person so chosen and elected for such unexpired term shall become the successor of the commissioner so recalled, and a certificate of his election for such unexpired term shall be issued and transmitted to him by the State oil and gas supervisor. And like proceedings shall be had in case more than one commissioner shall be included in said petition for recall.

In all recall elections, qualifications for voters and the number of votes which they will be entitled to cast shall be the same as

they respectively were in the election of the commissioner as to whom such recall election is being held.

Vacancies.

In case of vacancy caused by the death, resignation or removal from district or ceasing to be engaged in the business of development or production of oil or gas in the district as to the office of any commissioner, such vacancy shall be filled until the next annual election by the remaining commissioners of such district.

Officer Interested. Supervisors Duties.

Upon any subject in which any commissioner is personally interested, or upon which any corporation, copartnership, association or individual by whom he is employed is directly interested as a party, such commissioner shall not be entitled to sit or vote. The board of commissioners shall be entitled to call upon the supervisor for advice, and written report upon any matter referred to the board of commissioners, and the supervisor shall be entitled to call meetings of the commissioners at the office of the field supervisor, upon five days' written notice, to obtain their written advice upon any matters relating to his work within their district. Act 1919 amending 1917 which amended 1915.

Practice on Complaints.

Sec. 11. Upon receipt by the supervisor or deputy supervisor of a written complaint specifically setting forth the condition complained against, signed by a person, firm, corporation or association owning land or operating wells within a radius of one mile of any well or group of wells complained against, or upon the written complaint specifically setting forth the condition complained against, signed by any one of the board of commissioners for the district in which said well or group of wells complained against is situated, the supervisor must make an investigation of said well or wells and render a written report stating the work required to repair the damage complained of, or stating that no work is required. A copy of said order must

be delivered to the complainant, or if more than one, each of said complainants, and if the supervisor order the damage repaired, a copy of such order shall be delivered to each of the owners, operators or agents having in charge the well or wells upon which the work is to be done. Said order shall contain a statement of the conditions sought to be remedied or repaired and a statement of the work required by the supervisor to repair such condition. Service of such copies shall be made by mailing to such persons at the post office address given. Act 1915, p. 1404, 1917, p. 1592.

Conduct of Investigations.

Sec. 12. In any proceeding before the board of commissioners as herein provided, or in any other proceeding or proceedings instituted by the supervisor for the purpose of enforcing or carrying out the provisions of this Act, or for the purpose of holding an investigation to ascertain the condition of any well or wells complained of, or which in the opinion of the supervisor may reasonably be presumed to be improperly drilled, operated, maintained or conducted, the supervisor and the chairman of the board of commissioners shall have the power to administer oaths and may apply to a judge of the Superior Court of the State of California, in and for the county in which said proceeding or investigation is pending, for a subpoena for witnesses to attend at said proceeding or investigation. Upon said application of said supervisor or said chairman of said board of commissioners, said judge of said Superior Court must issue a subpoena directing said witness to attend said proceeding or investigation; *provided, however*, that no person shall be required to attend upon such proceeding, either with or without such books, papers, documents or accounts unless residing within the same county or within thirty miles of the place of attendance. But the supervisor or the chairman of the board of commissioners may in such case cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in Superior Courts of this State, and to that end may, upon application to a judge of the Superior Court of the county within which said

proceeding or investigation is pending, obtain a subpoena compelling the attendance of witnesses and the production of books, papers and documents at such places as he may designate within the limits hereinbefore prescribed. Witnesses shall be entitled to receive the fees and mileage fixed by law in civil causes, payable from the fund hereinafter created. In case of failure or neglect on the part of any person to comply with any order of the supervisor as hereinbefore provided, or any subpoena, or upon the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, or upon refusal or neglect to appear and attend at any proceeding or hearing on the day specified, after having received a written notice of not less than ten days prior to such proceeding or hearing, or upon his failure, refusal or neglect to produce books, papers or documents as demanded in said order or subpoena upon such day, such failure, refusal or neglect shall constitute a misdemeanor and each day's further failure, refusal or neglect shall be and be deemed to be a separate and distinct offense, and it is hereby made the duty of the district attorney of the county in which said proceeding, hearing or investigation is to be held, to prosecute all persons guilty of violating this section by continuous prosecution until such person appears or attends or produces such books, papers or documents or complies with said subpoena or order of the supervisor or chairman of the board of commissioners. Act 1915, p. 1404, 1917, p. 1593.

Written Decisions. Review by Certiorari.

Sec. 13. Within ten days after hearing the evidence, the board of commissioners must make a written decision with respect to the order appealed from, and in case the same is affirmed or modified, shall retain jurisdiction thereof until such time as the work ordered to be done by such order shall be finally completed. This written decision shall be served upon the owner or his agent and shall supersede the previous order of the supervisor. In case no written decision be made by said board of commissioners within thirty days after the date of notice by the supervisor as provided in section ten hereof, the order of the supervisor shall be effective and subject only to re-

view by writ of certiorari from the superior court as provided in section fourteen hereof. Act 1915, p. 1404, 1917, p. 1594.

Practice on Review. Enforcing Repairs.

Sec. 14. On or before thirty days after the date of serving an order of the supervisor, provided for in section eight hereof, or in case of appeal to the board of commissioners, on or before thirty days after date of serving the decision of the board, as provided in sections twelve and thirteen hereof, or in the event review be taken of the order of the board of commissioners within ten days after affirmance of such order, the owner shall commence in good faith the work ordered and continue until completion. If the work has not been so commenced and continued to completion, the supervisor shall appoint agents as he deems necessary who shall enter the premises and perform the work. Accurate account of such expenditures shall be kept and the amount paid from the fund hereinafter created upon the warrant of the State Controller. Any amount so expended shall constitute a lien against the property upon which the work is done. The decision of the board of commissioners in such case may be reviewed by writ of certiorari from the Superior Court of the county in which the district is situated, if taken within ten days after the service of the order upon said owner, operator or agent of said owner or operator as herein provided; or within ten days after decision by the board of commissioners upon petitions by the supervisor. Such writ shall be made returnable not later than ten days after the issuance thereof and shall direct the district board of oil and gas commissioners to certify their record in the cause to such Court. On the return day the cause shall be heard by the Court unless for good cause the same be continued, but no continuance shall be permitted for a longer period than thirty days. No new or additional evidence shall be introduced in the Court before the cause shall be heard upon the record of the district board of oil and gas commissioners. The review shall not be extended further than to determine whether or not —

1. The Commission acted without or in excess of its jurisdiction.

2. The order, decision or award was procured by fraud.
3. The order, decision, rule or regulation is unreasonable.
4. The order, decision, regulation or award is clearly unsupported by the evidence.

If no review be taken within ten days, or if taken in case the decision of the board is affirmed, the lien upon the property shall be enforced in the same manner as the other liens on real property are enforced, and shall first be enforced against the owner of the well, against the operator and against the personal property and fixtures used in the construction or operation thereof, and then if there be any deficiency against the land upon which the work is done, upon the request of the supervisor, the State Controller must, in the manner provided in section forty-four of this Act, bring an action for the enforcement of said lien. Act 1915, p. 1404, 1917, p. 1594.

Regulation of Casing. Protection against Water.

Sec. 15. It shall be the duty of the owner of any well now drilled, or that may be drilled in the State of California, on lands producing or reasonably presumed to contain petroleum or gas, to properly case such well or wells with metal casing, in accordance with methods approved by the supervisor, and to use every effort and endeavor in accordance with the most approved methods to effectually shut off all water overlying or underlying the oil or gas-bearing strata, and to effectually prevent any water from penetrating such oil or gas-bearing strata.

Whenever it appears to the supervisor that any water is penetrating oil or gas-bearing strata, he may order a test of water shut-off and designate a day upon which the same shall be held. Said order shall be in written form and served upon the owner of said well at least ten days prior to the day designated in said order as the day upon which said shut-off test shall be held. Upon the receipt of such order it shall be the duty of the owner to hold said test in the manner and at the time prescribed in said order. Act 1915, p. 1404, 1917, p. 1595.

Regulation of Abandonment of Well.

Sec. 16. It shall be the duty of the owner of any well referred to in this Act, before abandoning the same, or before removing the rig, derrick or other operating structure therefrom, or removing any portion of the casing therefrom, to use every effort and endeavor in accordance with methods approved by the supervisor, to shut off and exclude all water from entering oil-bearing strata encountered in the well. Before any well is abandoned the owner shall give written notice to the supervisor, or his local deputy, of his intention to abandon such well and of his intention to remove the derrick or any portion of the casing from such well and the date upon which such work of abandonment or removal shall begin. The notice shall be given to the supervisor, or his local deputy, at least five days before such proposed abandonment or removal. The owner shall furnish the supervisor, or his deputy with such information as he may request showing the condition of the well and proposed method of abandonment or removal. The supervisor, or his deputy, shall before the proposed date of abandonment or removal, furnish the owner with a written order of approval of his proposal or a written order stating what work will be necessary before approval, to abandon or remove will be given. If the supervisor shall fail within the specified time to give the owner a written order such failure shall be considered as an approval of the owner's proposal to abandon the well, or to remove the rig or casing therefrom. Act 1915, p. 1404, 1917, p. 1596.

Notice of Intention to Commence Drilling.

Sec. 17. The owner or operator of any well referred to in this Act shall, before commencing the work of drilling an oil or gas well, file with the supervisor, or his local deputy, a written notice of intention to commence drilling. Such notice shall also contain the following information: (1) Statement of location and elevation above sea level of the floor of the proposed derrick and drillrig; (2) the number or other designation by which such well shall be known, which number or designation shall not be changed after filing the notice provided for in this

section, without the written consent of the supervisor being obtained therefor; (3) the owner's or operator's estimate of the depth of the point at which water will be shut off, together with the method by which such shut-off is intended to be made and the size and weight of casing to be used; (4) the owner's or operator's estimate of the depth at which oil or gas producing sand or formation will be encountered.

After the completion of any well the provisions of this section shall also apply, as far as may be, to the deepening or re-drilling of any well, or any operation involving the plugging of any well or any operations permanently altering in any manner the casing of any well; *and provided, further*, that the number or designation by which any well heretofore drilled has been known, shall not be changed without first obtaining a written consent of the supervisor. Act 1915, p. 1404, 1917, p. 1596.

Items of Log of Well. Prospect Wells.

Sec. 18. It shall be the duty of the owner or operator of any well referred to in this Act, to keep a careful and accurate log of the drilling of such well, such log to show the character and depth of the formation passed through or encountered in the drilling of such well, and particularly to show the location and depth of the water-bearing strata, together with the character of the water encountered from time to time (so far as ascertained) and to show at what point such water was shut off, if at all, and if not, to so state in such log, and show completely the amounts, kinds and size of casing used, and show the depth at which oil-bearing strata are encountered, the depth and character of same, and whether all water overlying and underlying such oil-bearing strata was successfully and permanently shut off so as to prevent the percolation or penetration into such oil-bearing strata; such log shall be kept in the local office of the owner or operator, and together with the tour reports of said owner or operator, shall be subject, during business hours, to the inspection of the supervisor, or any of his deputies, or any of the commissioners of the district, except in the case of a prospect well as hereinafter defined. Upon the completion of any well, or upon the suspension of operations upon any well,

for a period of six months if it be a prospect well, or for thirty days, if it be in proven Territory, a copy of said log in duplicate, and in such form as the supervisor may direct, shall be filed within ten days after such completion, or after the expiration of said thirty-day period, with the field supervisor, and a like copy shall be filed upon the completion of any additional work in the deepening of any such well.

The State oil and gas supervisor shall determine and designate what wells are prospect wells within the meaning of this Act, and no reports shall be required from such prospect wells until six months after the completion thereof.

The owner or operator of any well drilled previous to the enactment of this Act shall furnish to the supervisor or his deputy a complete and correct log in duplicate and in such form as the supervisor may direct, or his deputy, of such well, so far as may be possible, together with a statement of the present condition of said well. Act 1915, p. 1404, 1917, p. 1597.

Shut-off of Well Regulated.

Sec. 19. It shall be the duty of the owner or operator of any well referred to in this Act to notify the deputy supervisor of the time at which the owner or operator shall test the shut-off of water in any such well. Such notice shall be given at least five days before such test. The deputy supervisor or an inspector designated by the supervisor shall be present at such test and shall render a report in writing of the result thereof to the supervisor a duplicate of which shall be delivered to the owner. If any test shall be unsatisfactory to the supervisor he shall so notify the owner or operator in said report, and shall within five days after the completion of such test, order additional tests of such work as he deems necessary to properly shut off the water in such well and in such order shall designate a day upon which the owner or operator shall again test the shut-off of water in any such well, which day may, upon the application of the owner, be changed from time to time in the discretion of the deputy supervisor. Act 1915, p. 1404, 1917, p. 1597.

Monthly Reports of Production.

Sec. 20. It shall be the duty of every person, association or corporation producing oil in the State of California, to file with the supervisor, at his request, but not oftener than once in each month, a statement showing amount of oil produced during the period indicated from each well, together with its gravity and the amount of water produced from each well, estimated in accordance with methods approved by the supervisor, and the number of days during which fluid was produced from each well, the number of wells drilling, producing, idle or abandoned, owned or operated by said person, association or corporation; *Provided*, that, upon request and satisfactory showing a longer interval may be fixed by the State oil and gas supervisor as to such reports in the case of any specific owner or operator.

This information shall be in such form as the supervisor may designate. Act 1915, p. 1404, 1917, p. 1598.

Penalties for Violations.

Sec. 21. Any owner or operator of a well referred to in this Act or employee thereof, who refuses to permit the supervisor, or his deputy, to inspect the same, or who wilfully hinders or delays the enforcement of this Act, and every person, firm or corporation who violates any provision of this Act is guilty of a misdemeanor and shall be punishable by a fine of not less than one hundred dollars, or by imprisonment in the county jail for not less than thirty days, or by both such fine and imprisonment. Act 1915, p. 1404.

Public Interest and Police Power Justify Charges.

Sec. 21a. The charges hereinafter provided for are directed to be levied by the State of California as necessary in the exercise of its police power and to provide a means by which to supervise and protect deposits of petroleum and gas within the State of California, in which deposits the people of the State of California are hereby declared to have a primary and supreme interest. Act 1915, p. 1404, 1917, p. 1598.

Collections for Use of the Department.

Sec. 22. Charges levied, assessed and collected as hereinafter provided upon the properties of every person, firm, corporation or association operating any well or wells for the production of petroleum in this State, or operating any well or wells for the production of natural gas in this State which gas wells are situate on lands situate within two miles, as near as may be, of any petroleum or gas well, the production of which is chargeable under this Act, shall be used exclusively for the support and maintenance of the department of petroleum and gas hereinbefore created, and shall be assessed and levied by the State mineralogist, and collected in the manner hereinafter provided. Act 1915, p. 1404, 1917, p. 1598.

Tax on Barrels Produced.

Sec. 23. Every person, firm, corporation or association operating any petroleum well or wells in this State shall annually pay a charge to the State treasurer at a uniform rate per barrel of petroleum produced for the preceding calendar year at the time and in the manner hereinafter provided, based upon a verified report as herein provided. Act 1915, p. 1404.

Gas to Pay on Cubic Feet.

Sec. 24. Every person, firm, corporation or association operating any gas well or wells in this State shall annually pay a charge to the State treasurer based upon the amount of gas sold in the preceding calendar year, at a fixed rate per thousand cubic feet, at the times and in the manner hereinafter provided, based upon a verified report as herein provided. Act 1915, p. 1404, 1917, p. 1599.

Assessment of Charges against Land.

Sec. 25. Every person, firm, corporation or association owning any oil land, as determined by the supervisor, shall annually pay a charge to the State treasurer at the time and in the manner hereinafter provided, which charge shall be a uniform rate per

acre. Said charge shall be based upon a verified report as provided herein; *provided, however*, that such lands so assessed shall not be called upon to pay more than one-tenth of the total charges or moneys proposed to be assessed, levied and collected under the provisions of this Act for any one year. Act 1915, p. 1404.

All Charges Additional.

Sec. 26. The charges assessed, levied and to be collected under the provisions of this Act shall be in addition to any and all charges, taxes, assessments or licenses of any kind or nature paid by or upon the properties assessed hereunder. *Id.*

Annual Estimate for Expenses.

Sec. 27. The State mineralogist shall annually, on or before the first Monday in March, acting in conjunction with the State board of control, make an estimate of the amount of moneys which shall be required to carry out the provisions of this Act.

At the time of making such estimate, the State mineralogist shall report to the State Board of Control the amount of money in the petroleum and gas fund on the day such estimate is made, less the amount of money necessary for the support of the department of petroleum and gas for the remainder of the fiscal year, and the amount of such estimate shall in no event exceed the difference between the amount thus determined as remaining in the petroleum and gas fund at the end of the fiscal year and the sum of one hundred fifty thousand dollars. Act 1915, p. 1404, 1917, p. 1599.

Form of Reports by Owners.

Sec. 28. The State mineralogist shall prescribe the form and contents of all reports for making the charge or other purposes to carry out the intent and provision of this Act, which form shall be mailed in duplicate to the person, firm, corporation or association owning property or assessed under the provisions of this Act. Act 1915, p. 1404.

Annual Reports from Operators.

Sec. 29. Every person, firm, corporation or association chargeable under the provisions of this Act shall within ten days after the first Monday in March of each year, report to and file with the State mineralogist a report in such form as said officer may prescribe, giving any and all items of information as may be demanded by said report, and necessary to carry out the provisions of this Act, which report shall be verified by such person or officer as the State mineralogist may designate. *Id.*

Procedure on Failure to Report.

Sec. 30. If any person, firm, corporation or association chargeable under the provisions of this Act shall fail or refuse to furnish the State mineralogist within the time prescribed in this Act the verified report provided for in this Act, the State mineralogist must note such failure or refusal in the record of assessments hereinafter in this Act provided for, and must make an estimate of the petroleum or gas production, or landed area to be assessed of any such person, firm, corporation or association and must assess the same at the amount thus estimated and compute the charge thereon, which assessment and charge shall be the assessment and charge for such year. And if in the succeeding year any such person, firm, corporation or association shall again fail and refuse to furnish the verified report required by this Act, the State mineralogist shall make an estimate as aforesaid, which estimate shall not be less than twice the amount of the estimate made by him for the previous year, and shall note such failure or refusal as above provided, and the said estimate so made shall be the assessment or charge for said year. In case of each succeeding consecutive failure or refusal the said State mineralogist shall follow the same procedure until a true statement or report shall be furnished. *Id.*

Penalty for False Report.

Sec. 31. Any person, firm, corporation or association failing or refusing to make or furnish any report which may be required pursuant to the provisions of this Act, or who wilfully

renders a false or fraudulent report, shall be guilty of a misdemeanor and subject to a fine of not less than three hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or both such fine and imprisonment for each such offense. Act 1915, p. 1404, 1917, p. 1599.

Extension of Time to Report.

Sec. 32. The State mineralogist may, for good cause shown, by order entered upon his minutes, extend for not exceeding thirty days, the time fixed in this Act for filing any report herein provided for. Act 1915, p. 1404.

Rate of Assessment.

Sec. 33. On or before the third Monday before the first Monday in July of each year, the State mineralogist shall determine the rate or rates which shall produce the sums necessary to be raised as provided in section twenty-seven of this Act. Within the same time the said State mineralogist shall extend into the proper column of the record of assessments hereinafter provided for, the amount of charges due from each person, firm, corporation or association. Act 1915, p. 1404, 1917, p. 1599.

Annual Assessment. Clerical Errors.

Sec. 34. Between the first Monday in March and the third Monday before the first Monday in July in each year, the State mineralogist must assess and levy the charges as and in the manner provided for in this Act. The assessments must be made to the person, firm, corporation or association owning or operating the property subject to assessment hereunder on the first Monday in March. If the name of the owner is unknown to the State mineralogist, such assessment must be made to unknown owners. Clerical errors occurring or appearing in the name of any person, firm, corporation or association whose property is properly assessed and charged, or in the making, or extension of any assessment or charge upon the records, which do not

affect the substantial rights of the payer, shall not invalidate the assessment or charge. Act 1915, p. 1404.

Board of Equalization.

Sec. 35. The State mineralogist and the chairman of the State Board of Control and the chairman of the State Board of Equalization shall constitute a board of review, correction and equalization, and shall have all the powers and perform such duties as usually devolve upon a county board of equalization under the provisions of section three thousand six hundred seventy-two of the Political Code. The State mineralogist shall act as Secretary of said board, and shall keep an accurate minute of the proceedings thereof. Said board of review, correction and equalization shall meet at the State Capitol on the third Monday before the first Monday in July of each year, and remain in session from day to day until the first Monday in July for the purpose of carrying out the provisions of this section. *Id.*

Publication of Assessment Notice. Correction of Records.

Sec. 36. On the third Monday before the first Monday in July of each year the State mineralogist shall cause to be published a notice, one or more times, in a daily, or weekly, or semiweekly newspaper of general circulation published in the counties of Fresno, Kern, Los Angeles, Orange, Ventura and Santa Barbara, and such other counties as may contain lands or produce oil or gas charged under and pursuant to the terms and provisions of this Act, if one be published therein, otherwise in a newspaper of general circulation published in the county nearest to such county designated herein in which no such paper is published, that the assessment of property and levy of charges under and in pursuance of this Act has been completed and that the records of assessments containing the charges due will be delivered to the State Controller on the first Monday in July, and that if any person, firm, corporation or association is dissatisfied with the assessment made or charge fixed by the State mineralogist, he or it may, at any time before said first Monday in July, apply to said board of review, cor-

rection and equalization to have the same corrected in any particular. The said board shall have the power at any time before said first Monday in July to correct the record of assessments and may increase or decrease any assessment or charge therein if in its judgment the evidence presented or obtained warrants such action. Costs of such publication in any county shall be paid from the petroleum and gas fund; *provided, however*, that the omission to publish said notice as hereinbefore and in this section provided, shall not affect the validity of any assessment levied under or pursuant to the provisions of this Act. Act 1915, p. 1404, 1917, p. 1600.

Public Record of Assessment.

Sec. 37. The State mineralogist must prepare each year a book in one or more volumes, to be called the "Record of assessments and charges for the petroleum and gas fund," in which must be entered, either in writing or printing, or both writing and printing, each assessment and levy or charge made by him upon the property provided to be assessed and charged under this Act, describing the property assessed, and such assessments may be classified and entered in such separate parts of said record as said State mineralogist shall prescribe. Act 1915, p. 1404, 1917, p. 1600.

Form of Certificate of State Mineralogist.

Sec. 38. On the first Monday in July the State mineralogist must deliver to the State controller the record of assessments and charges for the petroleum and gas fund, certified to by said State mineralogist, which certificate shall be substantially as follows: "I,, State mineralogist, do hereby certify that between the first Monday in March and the first Monday in July, 19...., made diligent inquiry and examination to ascertain all property and persons, firms, corporations and associations subject to assessment for the purpose of the petroleum and gas fund as required by the provisions of the Act of legislature approved June 10, 1915, providing for the assessment and collection of charges for oil protection;

that I have faithfully complied with all the duties imposed upon me by law; that I have not imposed any unjust or double assessment through malice or ill will, or otherwise; nor allowed any person, firm, corporation or association or property to escape a just assessment or charge through favor or regard, or otherwise." But the failure to subscribe such certificate to such record of assessments and charges for oil protection, or any certificate, shall not in any manner affect the validity of any assessment or charge. Act 1915, p. 1404, 1917, p. 1600.

Charges, When Due.

Sec. 39. The charges levied and assessed under the provisions of this Act shall be due and payable on the first Monday in July in each year, and one-half thereof shall be delinquent on the sixth Monday after the first Monday in July at six o'clock p. m. and unless paid prior thereto, fifteen per cent shall be added to the amount thereof, and unless paid prior to the first Monday in February next thereafter at six o'clock p. m., an additional five per cent shall be added to the amount thereof, and the unpaid portion, or the remaining one-half of said charges shall become delinquent on the first Monday in February next succeeding, the day upon which they become due and payable, at six o'clock p. m.; and if not paid prior thereto five per cent shall be added to the amount thereof. Act 1915, p. 1404.

Public Notice of Date to Pay Dues.

Sec. 40. Within ten days after the receipt of the record of assessments and charges for oil protection, the State controller must begin the publication of a notice to appear daily for five days, in one daily newspaper of general circulation published in each of the counties of Fresno, Kern, Los Angeles, Orange, Ventura and Santa Barbara, and such other counties as may contain lands or produce oil or gas charged under or pursuant to the terms and provisions of this Act, if one be published therein, otherwise for at least two times in a weekly or semi-weekly paper of general circulation published therein, or if there be neither a daily nor weekly nor semi-weekly paper of

general circulation published in any one of such counties, then the publication of the notice for such county shall be made in a similar manner in a newspaper of general circulation published in the county nearest such county, specifying: (1) That he has received from the State mineralogist the record of assessments and charges for oil protection; (2) that the charges therein assessed and levied are due and payable on the first Monday in July and that one-half thereof will be delinquent on the sixth Monday after the first Monday in July at six o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, fifteen per cent will be added to the amount thereof, and unless paid prior to the first Monday in February next thereafter at six o'clock p. m., an additional five per cent will be added to the amount thereof; and that the remaining one-half of said charges will become delinquent on the first Monday in February next succeeding the day upon which they become due and payable, at six o'clock p. m., and if not paid to the State treasurer at the capitol prior thereto, five per cent will be added to the amount thereof. Costs of such publication in any county shall be paid from the petroleum and gas fund. Act 1915, p. 1404, 1917, p. 1601.

Assessments Made a Lien.

Sec. 41. The assessments and charges levied under the provisions of this Act shall constitute a lien upon all the property of every kind and nature belonging to the persons, firms, corporations and associations assessed under the provisions hereof, which lien shall attach on the first Monday in March of each year. Such lien shall be enforced and said charges collected by an action by the State controller as provided in section forty-four of this Act. *Id.*

Payments to Be Made to State Treasurer.

Sec. 42. All charges assessed and levied under the provisions of this Act shall be paid to the State treasurer upon the order of the State controller. The controller must mark the date of payment of any charge on the record of assessments for the petro-

leum and gas fund and shall give a receipt for such payment in such form as the controller may prescribe. Errors appearing upon the face of any assessment on said record of assessments or overcharges may be corrected by the controller by and with the consent of the State board of control, in such manner and at such time as said controller and said board shall agree upon. *Id.*

Contest of Charges.

Sec. 43. Any person, firm, corporation or association claiming and protesting as herein provided that the assessment made or charges assessed against him or it by the State mineralogist is void, in whole or in part, may bring an action against the State treasurer for the recovery of the whole or any part of such charges, penalties or costs paid on such assessment, upon the grounds stated in said protest, but no action may be brought later than the third Monday in February next following the day upon which the charges were due, nor unless such person, firm, corporation or association shall have filed with the State controller at the time of payment of such charges, a written protest stating whether the whole assessment or charge is claimed to be void, or if a part only, what part, and the grounds upon which such claim is founded, and when so paid under protest the payment shall in no case be regarded as voluntary.

Whenever, under the provisions of this section, an action is commenced against the State treasurer, a copy of the complaint and of the summons must be served upon the treasurer, or his deputy. At the time the treasurer demurs or answers, he may demand that the action be tried in the Superior Court of the county of Sacramento, which demand must be granted. The attorney employed by the State oil and gas supervisor must defend such action; *provided, however*, the said mineralogist may at the request of the said oil and gas supervisor employ additional counsel, the expense of which employment shall be paid from the petroleum and gas fund. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials and appeals are applicable to the proceedings herein provided for.

A failure to begin such action within the time herein specified shall be a bar against the recovery of such charges. In any such action the Court shall have the power to render judgment for the plaintiff for any part or portion of the charge, penalties, or costs found to be void and so paid by plaintiff upon such assessment. *Id.*

Collection of Delinquent Charges.

Sec. 44. The State controller shall, on or before the thirtieth day of May next following the delinquency of any charge as provided in this Act, bring an action in a Court of competent jurisdiction, in the name of the people of the State of California, in the county in which the property assessed is situated, to collect any delinquent charges or assessments, together with any penalties or costs, which have not been paid in accordance with the provisions of this Act and appearing delinquent upon the records of assessments and charges for the petroleum and gas fund in this action provided for.

The attorney for the State oil and gas supervisor shall commence and prosecute such action to final judgment and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings herein provided for. The State mineralogist may employ additional counsel to assist the attorney for the State oil and gas supervisor, and the expense of such employment shall be paid from the petroleum and gas fund.

Payments of the penalties and charges, or amount of the judgment recovered in such action must be made to the State treasurer. In such actions the record of assessment and charges for oil protection, or a copy of so much thereof as is applicable in said action, duly certified by the controller showing unpaid charges against any person, firm, corporation or association assessed by the State mineralogist is prima facie evidence of the assessment upon the property, the delinquency, the amount of charges, penalties, and costs due and unpaid to the State, and that the person, firm, corporation or association is indebted to the people of the State of California in the amount of charges and penalties therein appearing unpaid and that all the forms

of law in relation to the assessment of such charges have been complied with. *Id.*

Assessment Periods.

Sec. 45. The first assessment under the provisions of this Act shall be as of the first Monday in March, nineteen hundred sixteen, and the reports of petroleum production and sales of gas herein provided to be assessed shall be reported for the calendar year ending December thirty-first, nineteen hundred fifteen. The lands herein provided to be assessed and charged shall be assessed to the owners thereof as of the first Monday in March, nineteen hundred sixteen. Act 1915, p. 1404.

Petroleum and Gas Fund.

Sec. 46. All the moneys heretofore paid to the State treasurer under or pursuant to the provisions of this Act and deposited to the credit of the oil protection fund, shall be withdrawn from said fund, which is hereby abolished, and deposited to the credit of the petroleum and gas fund which is hereby created. All of the moneys hereafter paid to the State treasurer under or pursuant to the provisions of this Act shall be deposited to the credit of the petroleum and gas fund. All moneys in such fund shall be expended under the direction of the State mineralogist, drawn from such fund for the purpose of this Act upon warrants drawn by the controller of the State, upon demands made by the State mineralogist, and audited by the State Board of Control. Of the moneys in said petroleum and gas fund, when such action has been authorized by the State board of control, the State Mining Bureau may withdraw, without at the time furnishing vouchers and itemized statements, a sum not to exceed five hundred dollars, said sum so drawn to be used as a revolving fund where cash advances are necessary. At the close of each fiscal year, or at any other time, upon demand of the board of control, the moneys so drawn shall be accounted for and substantiated by vouchers and itemized statements submitted to and audited by the board of control. Act 1915, p. 1404, 1917, p. 1603.

Moneys to Be Credited to Such Fund.

Sec. 47. All moneys received in repayment of repair work done under the order and direction of the supervisor as hereinbefore provided, shall be returned and credited to the petroleum and gas fund. *Id.*

Annual Production and Finance Report by Supervisor.

Sec. 48. On or before the first day of October of each and every year the supervisor shall submit a report in writing to the State mineralogist showing the total number of barrels of petroleum produced in each county in the State during the previous calendar year, together with the total cost of said department for the previous fiscal year and the net amount remaining in the petroleum and gas fund available for the succeeding fiscal year's expense, also the total amount delinquent and uncollected from any assessments or charges levied under or pursuant to the provisions of this Act. Such report shall also include such other information as the supervisor may deem advisable. The State mineralogist shall make public such statements promptly after receipt of the same from the supervisor for the benefit of all parties interested therein. *Id.*

Lease Reports to Supervisor.

Sec. 49. The owner or operator of any lands or tenements subject to assessment under this Act shall, within six months after this Act goes into effect, file with the supervisor a certificate which shall contain the names of all the parties claiming an interest in or to said lands and full description of the property and the names of all parties in interest where such interest is held by lease, license or assignment. *Id.*

Supervisor and Other Terms Defined.

Sec. 50. Whenever the term "supervisor" is used in this Act it shall be taken to mean the "State oil and gas supervisor," the term "oil" shall include "petroleum," the term "petroleum" shall include "oil," the term "gas" shall mean natural gas coming

from the earth, the term "operator" shall mean any person, firm or corporation drilling, maintaining, operating, pumping, or in control of a well in any territory which the supervisor determines to be oil or gas producing territory, the term "owner" shall include "operator" when any oil or gas well is operated or has been operated or is about to be operated by any person, firm or corporation other than the owner thereof, and the term "operator" shall include "owner" when any such well is or has been or is about to be operated by or under the direction of the owner, except that all the provisions of this Act relating to assessments for the purposes of this Act based upon the annual production of oil or petroleum or sale of gas, as set forth in sections twenty-two to forty-five, inclusive, of this Act, shall apply only to a person, firm or corporation operating an oil or petroleum or gas well, and shall not apply to the owner of such well if some person, firm or corporation, other than such owner, has been actually operating the well during the whole period for which such annual charge is made, but in the event that the actual operation of any such well changes hands during such period, the charge shall be apportioned upon the basis of the oil or petroleum or gas produced, and the lien provided for in section forty-one of this Act shall be a lien against the property of each and all such operators. Act 1915, p. 1404.

\$20,000 First Appropriation.

Sec. 51. There is hereby appropriated out of any moneys in the State treasury, not otherwise appropriated, the sum of twenty thousand dollars, which said sum shall be immediately transferred by the State controller on the books of his office from the general fund to the "oil protection fund" created by section forty-six of this Act.

The above mentioned fund shall be available for the uses of the State mineralogist for the maintenance of the department of petroleum and gas and for the necessary expenses of the controller in carrying out the provisions of this Act. When the collections paid to the State treasurer, as herein provided, equal the sum of thirty thousand dollars then said sum of twenty thousand dollars shall be retransferred from the oil protection

fund to the general fund. The moneys received into the State treasury through the provisions of this Act are hereby appropriated for the uses and purposes herein specified. *Id.*

The Constitutional Clause.

Sec. 52. If any section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The legislature hereby declares that it would have passed this Act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional. *Id.*

Liberal Construction. Wells in Cities.

Sec. 53. This Act shall be liberally construed to meet its purposes and the supervisor shall have all powers which may be necessary to carry out the purposes of this Act, but the provisions of this Act shall not apply to any land or wells situated within the boundaries of an incorporated city where the drilling of oil wells is prohibited. *Id.*

Repeal of Prior Acts. Mining Bureau.

Sec. 54. That certain Act entitled "An Act to prevent injury to oil, gas or petroleum-bearing strata or formations by the penetration or infiltration of water therein," approved March 20, 1909, together with all Acts amendatory thereof and supplemental thereto and all Acts in conflict herewith are hereby repealed. Nothing herein shall be construed as affecting the provisions of the Act of June 16, 1913, establishing a State Mining Bureau. *Id.*

THE WASTE ACT.

An Act prohibiting the unnecessary wasting of natural gas into the atmosphere;

Providing for the capping or otherwise closing of wells from which natural gas flows;

And providing penalties for violating the provisions of this Act.

Waste of Gas Prohibited.

Sec. 1. All persons, firms, corporations and associations are hereby prohibited from wilfully permitting any natural gas wastefully to escape into the atmosphere. Act March 25, 1911, p. 499.

Gas Well to Be Plugged.

Sec. 2. All persons, firms, corporations or associations digging, drilling, excavating, constructing or owning or controlling any well from which natural gas flows shall upon the abandonment of such well, cap or otherwise close the mouth of or entrance to the same in such a manner as to prevent the unnecessary or wasteful escape into the atmosphere of such natural gas. And no person, firm, corporation or association owning or controlling land in which such well or wells are situated shall wilfully permit natural gas flowing from such well or wells, wastefully or unnecessarily to escape into the atmosphere. *Id.*

Penalty for Violation.

Sec. 3. Any person, firm, corporation or association who shall wilfully violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. *Id.*

Enlarging Crime by Definition.

Sec. 4. For the purposes of this Act each day during which natural gas shall be wilfully allowed wastefully or unnecessarily to escape into the atmosphere shall be deemed a separate and distinct violation of this Act. *Id.*

COLORADO.**Title.**

An Act relating to the production, purity, sale, and inspection of kerosene, gasoline, and all other fluid substances produced in whole or in part from petroleum, paint, varnish, filler, stain, linseed oil, turpentine and all other similar substances;

Establishing the office of State inspector of oil with officers, assistants, and powers to enforce the provisions of this Act;

And repealing all Acts and parts of Acts in conflict herewith. Approved April 13, 1915. Act of 1915, p. 367.

The first twenty-seven sections relate wholly to inspection of the several substances mentioned in the title.

Bore Hole Through Coal. Notice to State Inspector.

Sec. 28. It shall be the duty of the owner, owners, or person in charge of any bore hole which shall penetrate any workable coal seam or any accessible or inaccessible coal mine excavation, to notify the State oil inspector of the location of such bore hole by designating the particular five-acre subdivision of the land section on which such bore hole is situated, and the depth and thickness of each and every workable coal seam or accessible or inaccessible coal mine excavation penetrated by such bore hole, and on receipt of such notification the State oil inspector shall at once notify the State Coal mine inspector.

Waste of Gas or Oil.

Sec. 29. It shall be unlawful for any person or corporation having possession or control of any natural gas or oil well, whether as contractor, owner, lessee, agent or manager, to allow or permit the flow of gas or oil, from any such well, to escape into the open air, but shall use due diligence to confine such gas or oil in such well or pipes or other safe and proper receptacles, or shall put the same to some beneficial use.

Duty to Plug Abandoned Well.

Sec. 30. Whenever any well shall have been sunk for the pur-

pose of obtaining natural gas or oil, or exploring for the same, and shall be abandoned or cease to be operated for utilizing the flow of gas or oil therefrom, it shall be the duty of any person or corporation having custody or control of such well at the time of such abandonment, and also of the owner or owners of the land whereon such well is situated, to properly and securely stop and plug the same, in the following manner, to wit:

There shall be placed in such well, above and below each and every water bearing formation which shall have been encountered, a plug of seasoned wood, the diameter of which shall be not less than one-half inch smaller than the hole of such well where it is to be plugged, such plugs to be not less than five feet in length. The plug which shall be placed below such water bearing formation shall be properly anchored by ordinary methods, and the plug which shall be placed above such water bearing formation shall be anchored in like manner, and the hole immediately above such plug shall be filled for a distance of not less than three feet with finely broken sand, gravel or stone.

A plug of seasoned wood, or other wood obtainable in the vicinity of such well, and not less than five feet long, and of the diameter of the hole, shall be placed in the top of such well, in order to prevent the entrance of surface water.

In the event that for any reason any well or wells shall cease to be operated for the utilization of oil or gas, and it is the intention of the owners or persons having charge of such well or wells to reopen them at some future time for the utilization of the said oil or gas, the provisions of this Act relating to the plugging of wells shall be inoperative, except that it shall be imperative upon the owners or persons having charge and control of said well or wells, to adopt such measures as will prevent the oil or gas escaping into the open air until such time as the said well or wells are to be operated and the oil or gas put to some beneficial use.

Sworn Report of Plugged Well.

Sec. 31. Whenever any person, persons or corporations have abandoned or ceased operating any well or wells, as set forth in the immediately preceding section of this Act, such person,

persons or corporation shall file with the county clerk of the county in which such well or wells are located, a sworn statement setting out the manner in which such well or wells have been plugged, and the date that same were plugged, together with the location of such well or wells; said location to be considered sufficient when shown as being in a specified five-acre subdivision of a designated land section, when the location shall be upon surveyed lands. When upon unsurveyed lands, the location must be shown on a map of the land section in which it may be situated, with proper metes and bounds to identify it. The said statement to be sworn to by at least two persons who shall have assisted in the actual work of plugging of said well or wells.

Bore Hole Near Coal Mine.

Sec. 32. No bore hole penetrating a gas-bearing or oil-bearing formation shall be located within two hundred feet of a shaft, or entrance, to a coal mine not definitely abandoned or sealed; nor shall such bore hole be located within one hundred feet of any mine shaft house, mine boiler house, mine engine house, or mine fan; and the location of any proposed bore hole must insure that when drilled it will be at least fifteen feet from any mine haulage or airway.

Casing to Shut off Water.

Sec. 33. Any bore hole penetrating any workable seam of coal shall be cased by the owner of such bore hole with a suitable casing, conductor or drive pipe, so as to shut off all surface water from entering said workable coal seam.

Protection of Coal Seam.

Sec. 34. When bore holes for gas or oil are drilled in the coal measures and pass through workable seams, if gas or oil is encountered in such bore hole, the coal seams or worked out coal seams shall be sufficiently protected by casing so that the gas or oil shall not come in contact with the coal seams or enter the excavations of worked out seams.

Exclusion of Water.

Sec. 35. When water-bearing formation is encountered in the drilling of any bore hole for natural gas or oil, casing shall be set upon the next formation encountered which is of such a nature that it will sustain the casing, and exclude all water from the lower bore hole.

Log of Well.

Sec. 36. When a bore hole has been drilled and completed, and placed in operation for the utilization of natural gas or oil, the owner of such well shall file with the inspector a statement of the total depth of the hole, the sizes and lengths of casings used and remaining in the hole, the depth and thickness of coal seams penetrated and whether oil, gas or water was obtained.

The information thus given to the inspector shall not be deemed to be public record, and shall be given out by the inspector or his deputies, only upon the written consent of the person, persons or corporation rendering such statement.

Notification of Abandonment.

Sec. 37. When any oil or gas well is to be abandoned, the owner shall notify the inspector in writing, of such intent to abandon and shall proceed with the plugging as provided herein.

Certain Sections Limited.

Sec. 38. Sections 28, 32, 33, 34, 35 and 36 apply only to wells or bore holes which may be drilled through workable coal seams.

Annual Report of Inspector.

Sec. 39. On the first Monday of February of each year, the State inspector shall make and deliver to the governor of the State an annual report of the inspections made by him or his deputies for the preceding year.

Power to Remove Inspector.

Sec. 40. The governor shall have the power to remove from

office any inspector who is incompetent or unfaithful in the discharge of his official duty, or who having knowledge of the violation of any of the provisions of this Act, shall neglect or refuse to prosecute the offender.

Official Duty to Enforce.

Sec. 41. It shall be the duty of the district attorneys, in their districts, and the attorney general, in cases where the district attorney refuses to act, to enforce the provisions of this Act by appropriate actions in Courts of competent jurisdiction.

Appointment of State Inspector.

Sec. 42. The governor shall appoint a skilled and suitable person who has been qualified by the State civil service examination and who is not interested in the manufacture or dealing in oils, as State inspector of oils.

Oath of Inspector.

Sec. 43. Any person, appointed State inspector of oils or deputy inspector of oils, shall before entering on the duties of the office, take oath or affirmation as prescribed by the constitution of the State and shall file the same in the office of the Secretary of State.

Bond.

The State inspector shall execute a bond to the State of Colorado in the sum of ten thousand dollars which surety shall be approved by the Secretary of State, conditioned upon the faithful performance of the duties imposed upon him in the Act, and the bond shall be for the use of all persons in any way injured or aggrieved by the Acts or neglects of said inspectors.

The deputy inspectors shall execute a bond to the State of Colorado in the sum of five thousand dollars, which surety shall be approved by the judge of the District Court in the county where the said deputy is located, and bond shall also be for the use of all persons in any way aggrieved or injured by the acts of such deputy inspector.

Deputies. Analysis of Samples.

Section 44. There shall be three deputy oil inspectors, one of whom shall be the professor of mechanical engineering of the University of Colorado, and he shall have the supervision and charge of the laboratory and all instruments and appliances therein. It shall be the sole duty of this deputy and his qualified assistants to make all routine analyses of all samples submitted by the chief oil inspector, and to give such results in writing as may be necessary for the proper carrying out of the requirements of the Act. He shall employ qualified assistants at his own expense.

In cases where samples for tests and analysis which do not come under the provisions of this Act are submitted by either the State oil inspector or by private parties, a fee may be charged to cover the laboratory expenses and pay for the time of the deputy and his assistants.

The appointment of other deputies shall be made by the governor. Amendment of 1919, p. 562.

Sections 45, 46, and 47 make an appropriation, provide penalties and repeal prior Acts.

REQUIREMENTS AS TO PIPE LINE CORPORATIONS.**Additional Statements in Certificate for Pipe Line Companies.
Right of Way.**

Whenever any three or more persons associate under the provisions of said chapter XIX, of the General Statutes of the State of Colorado, to form a company, for the purpose of constructing a pipe line for the conveyance of gas, water or oil, they shall in their certificate, in addition to the matters required in section 2 (R. S. § 847) of said chapter XIX, specify as follows: The places from and to which it is intended to construct the proposed line or lines, and any pipe line company formed under the provisions of said chapter XIX, shall have the right of way over the line or lines named in the certificate, and shall also have the right to convey gas, water or oil, by said lines as stated in such certificate, through lands of the State of Colorado, and lands of in-

dividuals with the right to erect thereon pump station, storage tanks and other buildings necessary for such business, and if any such corporation shall be unable to agree with such individuals owning any of such lands for the purchase of any real estate required for the purpose of any such corporation or company, or the transaction of the business of the same, or for right of way, or any other lawful purpose connected with or necessary to the operation of said company, such corporation may acquire such title in manner provided by law. R. S. § 999, Act 1891, p. 94.

Pipe Line Companies. Right of Way.

Any foreign or domestic corporation organized or chartered for the purpose, among other things, of conducting or maintaining a pipe line for the transmission of power, water, air, or gas for hire to any mine or mining claim, or manufacturing, milling, mining, or public purpose, shall have the right of way for the construction, operation and maintenance of such pipe line or pipe lines, for such purposes, through any lands, without the consent of the owner thereof, where such right of way is necessary for the purpose for which said pipe line shall be used. R. S. § 2436, Act 1907, p. 282.

Pipe Line Company File Map of Course.

Any such pipe line corporation, desiring to avail itself of the benefit of this Act, shall file with the county clerk and recorder of the county or counties in which it is proposed to operate, a map or survey of its proposed line, for which it desires a right of way, together with a statement showing the route of the proposed pipe line, and the patented or unpatented mining claims or other property through which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line. R. S. § 2446, Act 1907, p. 282.

Companies Furnish Power on Payment of Fees.

Any such pipe line corporation, or electric power transmis-

sion, corporation or corporations shall, subject to its or their reasonable regulations, furnish to the owners of mining properties power from said pipe lines or electric power transmission lines upon payment to it or them at the rates established and fixed by such corporation or corporations. R. S. § 2450, Act 1907, p. 282.

There are no special provisions for the incorporation of oil or natural gas companies. They are covered of course by the sweeping sections providing for the incorporation of mining companies or companies organized for any lawful purpose.

ILLINOIS.

Record of Forfeiture of Lease.

Sec.1. When any lease on land heretofore or hereafter taken for the purpose of prospecting for oil or natural gas or operating oil or gas wells upon lands so leased, shall become forfeited by the terms of said lease or the acts of the lessee, it shall be the duty of the lessee, his, her or their successors or assigns within sixty days from the date this Act shall take effect, if such forfeiture take effect prior thereto and within sixty days from day of forfeiture of any and all other leases, to have such lease or leases released of record in the county where such land is situated, without any cost to the owner or owners of the land, and failure so to do shall constitute a misdemeanor and shall subject the offender to a fine of not more than two hundred dollars. Approved May 27, 1907. Acts p. 400. Ann. St. § 7552.

Costs on Action to Forfeit Lease.

Sec. 2. Whenever the lessee of any oil or natural gas lands or the person, firm, company or corporation, only holding or having control of any such lease shall allow the same to become forfeited, or by his, her or their Acts shall forfeit the same, and shall refuse, fail or neglect to cause the same to be released of record, the lessor or owner of said lands may begin a civil action to compel said party to release the same of record and upon judgment being rendered decreeing said lease forfeited and di-

recting the release, the said lessee, or his assigns, shall be decreed to pay all costs by such action, including a reasonable attorney fee to be taxed as costs. *Id.* § 7553.

Distance of Well from Adits and Air Shafts.

Sec. 1. No oil or gas well shall be drilled hereafter nearer than 250 feet to an opening to a mine used as a means of ingress or egress for the persons employed therein or which is used as an air shaft. Approved June 7, 1911. Acts, p. 426 amending Act of 1905. Ann. St. § 7545.

Drill Hole penetrating Coal Vein.

Sec. 2. It shall be the duty of any person, firm or corporation having the custody or control of any well drilled for gas or oil and of the owner of the land in which such well is drilled, when the drill hole penetrates a coal seam, to file in the office of the recorder of the county in which said oil or gas well is drilled, and in the office of the State Mining Board within fifteen days after completing said well, a statement and map giving the location and depth of every well so drilled and the county recorder shall file and enter and index same in the records of his office relating to the titles to real property. *Id.* § 7546.

Directions for Plugging Well.

Sec. 3. Before the casing shall be drawn from any well for the purpose of abandonment thereof, which has been drilled into any gas or oil-bearing rock, it shall be the duty of any person, firm or corporation having the custody or control of such well at the time of such abandonment, and also the owner or owners of the land wherein such well is situated, to properly and securely stop and plug the same in the following manner: Such hole first be solidly filled from the bottom thereof to a point at least twenty feet above such gas or oil-bearing rock with sand, gravel or pulverized rock, immediately on the top of which filling shall be seated a dry wood plug not less than two feet in length, having a diameter of not less than one-fourth of an inch less than

the inside diameter of the casing in such well. And above such wooden plug such well shall be solidly filled for at least twenty-five feet with the above-mentioned filling material, immediately above which shall be seated another wood plug of the same kind and size as above provided, and such well shall again be solidly filled for at least twenty-five feet above such plug with such filling material. After the casing has been drawn from such well there shall immediately be seated at the point where such casing was seated a cast-iron ball or tampered wood plug at least two feet in length, the diameter of which ball or the top of which wood plug shall be greater than that of the hole below the point where such casing was seated, and above such ball or plug such well shall be solidly filled to top of well with the aforesaid material. *Id.* § 7547.

Proof of Plugging.

Sec. 4. The person, firm or corporation owning or having control or custody of any such well, or the land in which any such well is situated, shall file or cause to be filed in the office of the recorder of the county in which any such well is located, within fifteen days after the same has been plugged, as provided in section 3, the affidavit of at least two persons who were present during the plugging of such well, which affidavit shall be recorded in the record books in the office of the recorder of such county, and shall set out in detail the manner in which such well was plugged and the depth of each such wood plugs and iron bail below the surface of the ground, and the record of such affidavit shall be *prima facie* evidence in any court of a compliance with the provisions of this Act. *Id.* § 7548.

Casing Out the Water.

Sec. 5. It shall be the duty of any person, firm or corporation sinking a well in any oil or gas-bearing rock, or having sunk such well and maintaining the same, to case off and keep cased off all fresh water from such well. *Id.* § 7549.

Penalties for Failure to Plug or Record.

Sec. 6. Any person, firm or corporation violating the provisions of section 1 or failing to comply with the provisions of section 2 of this Act, or who shall fail or refuse to plug a well in the time and manner provided in section 3 of this Act, or shall fail or neglect to secure and file in the proper recorder's office the affidavit provided for and required in section 4 of this Act, or shall fail and neglect to properly case off fresh water from such well and keep the same cased off while said well is maintained, as provided in section 5 of this Act, shall be liable to a penalty of one hundred dollars (\$100) for each and every violation thereof; and the further sum of one hundred dollars (\$100) for each ten days during which such violation shall continue, and all such penalties shall be recoverable in a civil action brought in any court of competent jurisdiction in any county in which said violation occurred, brought in the name of the State of Illinois on the relation of such county, and for the use and benefit of such county, and in all such cases; if there be recovery by the State, it shall recover in addition to such penalties a reasonable attorney's fee. *Id.* § 7550.

Section 7 is the emergency clause.

INDIANA.

Under the general incorporation laws of Indiana, companies may be organized for the purpose of sinking and operating oil and gas wells and of selling the products of such wells. Burns Ann. Stat. secs. 4287, 4304. And by sec. 5134 "mining" is defined to cover and include the sinking, drilling, boring and operating wells for petroleum and natural gas and by section 5137 the capital stock of any such company must not exceed \$2,000,000.

Natural Gas Supervisor, Office Created and Duties Declared.

Sec. 1. That the office of natural gas supervisor is hereby established, and within thirty days after the taking effect of this

Act the State geologist of Indiana shall appoint a skilled and suitable person, who shall have a practical knowledge of geology and natural gas, and who is not directly or indirectly interested in piping or selling natural gas, as natural gas supervisor of the State of Indiana. Such supervisor shall serve for a term of four years, and until his successor is appointed and qualified, and in case a vacancy occurs in the office of natural gas supervisor from any cause, the State geologist shall fill such vacancy by appointment as herein prescribed: *Provided, however,* The State geologist shall have power to remove such supervisor at any time for violation or neglect of duty. Such supervisor shall receive an annual salary of twelve hundred dollars, and the further sum of six hundred dollars for traveling and other expenses, and an annual appropriation of eighteen hundred dollars is hereby made out of any moneys in the State treasury not otherwise appropriated for the salary and expenses of such supervisor. The State geologist shall issue to such natural gas supervisor a certificate of appointment, and said supervisor shall, within ten days thereafter, make and execute a bond in the sum of one thousand dollars, payable to the State of Indiana, with his oath of office endorsed thereon, which bond shall be for the faithful performance of duty, and shall be approved by and filed with the Secretary of State. Such supervisor, when he has qualified according to law, shall devote all his time to the business of his office, and he shall work at all times under the direction of the State geologist. He shall make personal inspection of all the gas wells of the State, so far as practicable, and shall see that every precaution is taken to insure the health and safety of workmen engaged in opening gas wells and laying mains and pipes, and of those who, in any manner, use gas for mechanical, manufacturing, domestic or other purposes. He shall see that all the provisions of law pertaining to the drilling of wells and the piping and consumption of natural gas are faithfully carried out, and that the penalties of law are strictly enforced against any person or persons who violate the same, and promptly report all violations of law to the attorney-general of the State. He shall collect and tabulate in his annual report to the State geologist, which shall be made on the second

Monday in January of each year, and published in the report of the State geologist, the following facts: The number of gas wells, with location; a record of the geological strata passed through in drilling wells, depth at which salt water is reached in the various wells, and the height to which it rises; the volume of gas produced by each well, so far as it can be ascertained, and also the initial or rock pressure of the same; the increase or decrease in pressure of the various wells, so far as it can be ascertained, and also the increase or decrease in volume of gas produced; the number of miles of mains laid for the transportation of gas, and capacity and cost of the same; the amount of capital invested in the gas industry, and the number of persons employed in the same; the cost of gas as fuel at the various points at which it is used; the amount of capital invested in manufactories located on account of natural gas, and the number of the same, together with the amount and kind of products and number of employees, and such other facts and information as the State geologist may require. 1891 p. 379. Burns Ann. Stat. sec. 9056.

Inspection Duties.

Sec. 2. It shall be the duty of the natural gas supervisor to inspect all natural gas pipe lines in this State, at least once in each year, and as often as may be necessary, or whenever he may be directed by the State geologist; and he shall have the power to condemn any pipes or portions of lines that he may deem unsafe or dangerous to life or property. And any person or persons using, or causing to be used, any pipe line or portions thereof after the same has been condemned, shall be guilty of a misdemeanor, and upon conviction shall be fined in any court having jurisdiction of misdemeanors, in any sum not exceeding one hundred dollars; and any person or persons in this State owning natural gas wells or natural gas pipe lines, or who controls the same, who refuses to allow the same to be inspected by the natural gas supervisor, upon conviction shall be fined in any sum not exceeding fifty dollars: *Provided, further,* That whenever any responsible person shall file with such gas supervisor an affidavit charging the owner or owners of such

gas plant or wells, or any person using the same, or their employees, with the violation of any of the laws regulating the use of natural gas, and particularly specifying the violation complained of, it shall be the duty of such supervisor to examine and inquire into the alleged violation of the law as set forth in the affidavit, and if he finds the facts as charged it shall be his duty to see that the law is complied with. Burns Ann. St. sec. 9057.

Repairs of Leaks.

Sec. 1. That it shall be and is hereby made the duty of the natural gas supervisor of the State of Indiana, upon the discovery of any leak in any pipe line for transportation of natural gas, or in any machinery, apparatus, appliance or device used in the regulation or distribution thereof, to forthwith notify, in writing, the owner or superintendent of said pipe line, machinery, apparatus, appliance or device, to have the same repaired within two days from the time of receipt of said notice. In case such leak has not been repaired within two days from the time of receiving such notice it shall be the duty of said natural gas supervisor to make such repairs as may in his judgment be necessary to stop said leak; and such natural gas supervisor shall have a lien upon said pipe line and all wells with which the same may be connected, for the cost of making such repairs, for the enforcement of which, with all costs of suit, and a reasonable attorney's fee, an action may be maintained by him in any Court of competent jurisdiction; and the judgment so obtained shall be collectible without relief from valuation or appraisement laws of the State. In case of any pipe line, machinery, apparatus, appliance or device, owned by a corporation, partnership, or by a non-resident of or absentee from the State of Indiana, the notice herein provided may be served upon any person in charge of such pipe line. Act of 1899, p. 83. Burns Ann. St. sec. 9058.

Test of Pipe Pressure.

Sec. 1. That any person or persons, firm, company or corporation, engaged in drilling for, piping, transporting, using or

selling natural gas, may transport or conduct the same through sound wrought or cast-iron castings and pipes tested to at least four hundred pounds' pressure to the square inch: *Provided*, Such gas shall not be transported through pipes at a pressure exceeding three hundred pounds per square inch: *Provided*, That the provisions of this Act shall not affect the costs in any pending litigation. Act of 1903, p. 110. Burns Ann. St. sec. 9060.

Fines. Shooting Well.

Sec. 2. Any person or persons, firm, company or corporation violating any of the provisions of this Act shall be fined in any sum not less than one thousand dollars or more than ten thousand dollars, and may be enjoined from conveying and transporting natural gas through pipes otherwise than in this Act provided: *Provided*, That nothing in this section shall operate to prevent the use of nitro-glycerine or other explosives for shooting any well or wells from which the gas is procured. Burns Ann. St. sec. 9061.

Two days' Limit to Confine Gas.

That it shall be unlawful for any person, firm or corporation having possession or control of any natural gas or oil well, whether as a contractor, owner, lessee, agent or manager, to allow or permit the flow of gas or oil from any such well to escape into the open air, without being confined within such well or proper pipes, or other safe receptacle for a longer period than two (2) days next after gas or oil shall have been struck in such well. And thereafter all such gas or oil shall be safely and securely confined in such well, pipes or other safe and proper receptacles. Any person, firm or corporation violating any of the provisions of this section shall be fined in any sum not less than fifty dollars, nor more than two hundred dollars, and for any second or subsequent violation of this section he shall be fined in any sum not less than two hundred dollars, nor more than five hundred dollars. Act of 1913, p. 66.

Plugging Well by Stranger.

Whenever any person or corporation in possession or control of any well in which natural gas or oil has been found shall fail to comply with the provisions of this Act, any person or corporation lawfully in possession of lands adjacent to or in the vicinity or neighborhood of such well may enter upon the lands upon which such well is situate and take possession of such well from which gas or oil is allowed to escape in violation of the provisions of section 1 of this Act and pack and tube such well and shut in and secure the flow of gas or oil, and maintain a civil action in any Court of competent jurisdiction in this State against the owner, lessee, agent or manager of said well, and each of them jointly and severally to recover the cost and expense of such tubing and packing, together with attorney's fees and costs of suit. This shall be in addition to the penalties provided by section 3 of this Act. Burns Ann. St. sec. 9063.¹

Recovery of Expenses Incurred.

Whenever any person or corporation shall abandon or cease to operate any natural gas or oil well, and shall fail to comply with the provisions of section 2 of this Act, any person or corporation lawfully in possession of lands adjacent to or in the vicinity or neighborhood of such well may enter upon the lands upon which such well is situated and take possession of such well, and plug and fill the same in the manner provided by section 2 of this Act, and may maintain a civil action in any Court of competent jurisdiction of this State against the person, persons or corporations so failing, jointly and severally, to recover the costs and expense of such plugging and filling, together with attorney's fees and costs of suit. This shall be in addition to the penalties provided by section 3 of this Act. Burns Ann. St. § 9064.

Interference with Gas Connections.

It is hereby declared to be unlawful for any person, in any

¹ The section 3 referred to in this and the next section is in the Act of 1893, p. 300.

manner whatever, to change, extend or alter, or cause to be changed, extended or altered any service or other pipe or attachment of any kind connecting or through which natural or artificial gas is furnished from the gas mains or pipes of any person, company or corporation without first procuring from said person, company or corporation, written permission to make such change, extension or alteration. Act of 1891, p. 382, Burns § 2705.

Gas Connections without Consent.

It is hereby declared to be unlawful for any person to make, or cause to be made, any connection or reconnection, with the gas mains or service pipes of any person, company, or corporation, furnishing to consumers natural or artificial gas, or turn on or off, or in any manner interfere with any valve or stop-cock, or other appliances belonging to such person, company or corporation, and connected with its service or other pipes, or to enlarge the orifice of mixers, or to use natural gas for heating purposes except through mixers, without first procuring from such person, company or corporation a written permit to turn on or off such stop-cock or valve, or to make such connections or reconnection, or to enlarge the orifice of mixers, or to use gas for heating without mixers, or to interfere with the valves, stop-cocks, or other appliances of such person, company or corporation, as the case may be. Burns § 2706.

Refusal to Return Gas Mixers.

It is hereby declared to be unlawful for any person or persons to whom any mixer or mixers or other appliances may be or may have been loaned or rented by any person, company or corporation for the purpose of furnishing gas through the same, to retain possession, or to refuse to deliver such mixer or mixers, or other appliances to the person, company or corporation entitled to the possession of the same, after such person, company or corporation shall have been entitled to the possession of the same, or to sell, loan or in any manner dispose of the same to any person or persons, other than said per-

son, company or corporation entitled to the possession of the same. Burns § 2707.

Setting Fire to Escaping Gas.

It is hereby declared to be unlawful for any person or persons to set on fire any gas escaping from wells, broken or leaking mains, pipes, valves, or other appliances, used by any person, company or corporation in conveying gas to consumers, or to interfere in any manner with the wells, pipes, mains, gate boxes, valves, stop-cocks or other appliances, machinery or property of any person, company or corporation engaged in furnishing gas to consumers, unless employed by or acting under the authority and direction of such person, company or corporation engaged in furnishing gas to consumers. Burns § 2708.

Penalty.

Any person violating any provision of this Act shall, upon conviction, be fined in any sum not less than five dollars nor more than one hundred dollars for such offense. Burns § 2709.

Flambeau Lights Forbidden.

The use of natural gas for illuminating purposes, in what are known as flambeau lights, is a wasteful and extravagant use thereof, and is dangerous to the public good, and it shall therefore be unlawful for any company, corporation or person, for hire, pay or otherwise, to use natural gas for illuminating purposes in what are known as flambeau lights in cities, towns, highways, or elsewhere: *Provided*, That nothing herein contained shall be construed as to prohibit any such company, corporation or person from the necessary use of such gas in what are known as "jumbo" burners enclosed in glass globes, or lamps or by the use of other burners of similar character so enclosed, as will consume no more gas than said "jumbo" burners. Burns § 2710, sec. 1, Act 1891, p. 55.

Hours for Jumbo Burners.

All gas lights in said "jumbo" burners and glass globes, or lamps used in all streets and public highways shall be turned off not later than 8 o'clock in the morning of each day such lights or burner is used, and the same shall not be lighted between the hours of 8 o'clock a. m. and 5 o'clock p. m. Burns § 2711. Sec. 2 *Id.*

Penalty.

Any one violating any of the provisions of section one (1) of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding twenty-five dollars, and for a second offence may be fined in any sum not exceeding two hundred dollars. Sec. 3. *Id.* Burns § 2712.

Operator to Furnish Meters Open for Inspection.

That every person, company or corporation now engaged or hereafter engaging in the business of furnishing natural or artificial gas for heating, illuminating or other purposes, to be used and paid for by patrons by meter measure, shall furnish to each and every patron a meter properly tested and in good order, and shall arrange such meters so that the patron can, at any time, see the meter dial and ascertain how much gas he is consuming, and how much he is liable to pay for. Sec. 1. Acts of 1901, p. 97. Burns § 2713.

Excess Charges Prohibited.

It shall be unlawful for any person, company or corporation engaged in furnishing gas to consumers, to be paid for by meter measure, to charge or receive, from any patron or consumer, pay for more gas than the meter furnished by such person, company or corporation shall indicate has been used by such consumer at the time to which payment is made and received. Sec. 2, *Id.* Burns § 2714.

Penalty.

Any person, company or corporation violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than ten dollars and not more than one hundred dollars for each offence. Sec. 3, *Id.* Burns § 2715.

Penalty for False Gas Meter.

Whoever knowingly constructs, or uses or furnishes to gas consumers to be used, any false meter provided for measuring and registering the quantity of gas consumed by any person under a contract with any gas company, shall, on conviction, be fined not less than ten dollars nor more than one hundred dollars. Burns § 2608.

Powers of Oil, Gas and Pipe Line Companies.

That whenever any company, corporation or voluntary association incorporated under the laws of the State of Indiana, or which may hereafter be incorporated thereunder for the purpose of drilling and mining for petroleum or natural gas, or otherwise acquiring gas or petroleum wells and the products thereof, and to furnish the same to its patrons for use within this State, and by manufacture to convert the same into gas for fuel and illuminating purposes, and other articles of commerce, shall desire to dig trenches and lay pipes for the purpose of conducting gas to its patrons within this State or conducting gas from its wells, or wells leased by it, or from its manufactory to any point within this State, such company, corporations or voluntary associations shall possess the powers, be subject to the liabilities and restrictions expressed in the following:

First. To cause such examination and surveys as may be necessary to the selection of the most advantageous routes for the said trenches and pipes, and for such purposes, by their officers, agents and servants, to enter upon the lands and waters of any person; but subject to responsibility for any damages which they shall do thereto.

Second. To receive, hold and take such voluntary grants and

donations of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of such trenches and pipes, but the real estate thus received by voluntary grants shall be held and used for the purposes of such grants only.

Third. To purchase, and by voluntary grants and donations, receive and take, and by its officers, engineers, surveyors and agents enter and acquire an easement in and upon and take possession of and use all such lands and real estate and other property as may be necessary for the construction and maintenance of the said trenches and pipes, and other accommodations necessary to accomplish the objects for which the company, corporation or voluntary association is created; but not until the compensation to be made therefor is agreed upon by the parties, or ascertained as hereinafter prescribed shall have been paid to the owner or owners thereof or deposited as hereinafter directed, unless the consent of such owner be given to enter into possession.

Fourth. To locate and lay out and construct its said trenches, not exceeding one rod in width for a single pipe line, and to construct the same; said trenches and pipe lines in all cases to be laid at such depth as not to interfere with the tillage of the soil, or the existing drainage, and the soil taken from said trenches shall be returned with the top soil on top, as originally found; said company, corporation or voluntary association to have the right to enter and go upon said right of way by its officers and agents, without hindrance, for the purpose of digging said trenches and laying said pipe, inspecting, operating and repairing the same.

Fifth. To dig its trenches, to lay its pipe lines over, across or under any stream of water, water-course, road, highway or railroad, so as not to interfere with the free use of the same, which the route thereof shall intersect, in such manner as to of county commissioners of the proper county shall so direct, afford security for life or property. And whenever the board said trenches and pipe lines may be constructed and laid along the right of way of any road or highway, but in all cases where said trenches or pipe lines shall be laid across, upon or along

any gravel road, road or highway thus intersected, said company, corporation or voluntary association shall immediately, upon the laying of any such pipe, restore the same to its former state, or in a sufficient manner not to have unnecessarily impaired its usefulness or injured its franchises.

Sixth. To purchase or acquire easements in and upon lands, and it may change the line of its said trenches and pipe lines whenever a majority of the directors shall so determine. Act of 1889, p. 22, Burns § 5138.

Right of Way for Pipe Line.

Whenever any such company, corporation or voluntary association is unable to agree with the owner or owners about the purchase of any real estate in any county required for the construction of its trenches and the laying of the mains and connecting pipes, it shall have the right to acquire an easement in and upon the same in the manner and by the special proceedings prescribed in this act. Burns, § 5139.

Deposit Required. Procedure to Condemn.

Such company, corporation or voluntary association is hereby authorized to enter upon any land for the purpose of examining and surveying its line for trenches and pipe lines, and may acquire an easement in and upon so much thereof as may be deemed necessary for its said trenches, not exceeding one rod in width for any single pipe line. The company, corporation or voluntary association shall forthwith deposit with the clerk of the circuit or other Court of record in the county where the line lies, a description of the rights and interest intended to be appropriated, and an easement in such land, rights and interests shall belong to such company, corporation or voluntary association to use for the purpose specified, by making or tendering payment as hereinafter provided. The company, corporation or voluntary association may, by its directors, purchase any such lands, right of way or interest of the owner of such land, or in case the same is owned by a person insane or an infant, at a price to be agreed upon by the regularly constituted guar-

dian of said insane person or infant, if the same shall be approved by the court in which the description aforesaid shall be filed, and on such agreement and approval the owner or guardian, as the case may be, shall convey the easement or right of way upon the said premises so purchased, to such company, corporation or voluntary association, and the deed when made shall be valid in law. If the company, corporation or voluntary association shall not agree with the owner of the land "or with his guardian if the owner is incapable of contracting" touching the damages sustained by such owner, such company, corporation or voluntary association shall deliver to such owner or guardian within the county a copy of such instrument of appropriation. If the owner "or his guardian, in case such owner is incapable of contracting," be unknown or does not reside within the county, such company, corporation or voluntary association shall publish in some newspaper of general circulation in the county, for the term of three weeks, an advertisement reciting the substance of such instrument of appropriation. Upon filing such act of appropriation and the delivery of such copy or making of such publication, the Circuit Court or other Court of record in the county where the land lies, or any judge thereof in vacation, upon the application of either party, shall appoint by warrant three disinterested freeholders of said county to appraise the damages which the owner of the land may sustain by such appropriation. Such appraisers shall be duly sworn. They shall consider the injury which such owner may sustain by reason of such trenches and pipe lines, and shall forthwith return their assessment of damages to the clerk of such Court, setting forth the value of the property taken or injury done to the property "which they shall assess to the owner or owners separately," to be by him filed and recorded. Thereupon said company, corporation or voluntary association shall pay to such clerk the amount thus assessed, or tender the same to the party in whose favor the damages are awarded or assessed. On making payment or tender thereof in the manner herein required, it shall be lawful for such company, corporation or voluntary association to hold the interest in said lands or material so appropriated for the uses aforesaid: *Provided, First, That any*

person aggrieved by the action or assessment of any appraisers appointed under this act may appeal therefrom to the Circuit Court of their county, under the same provisions and subject to the same restrictions as provided for in case of appeals from assessments under the laws of this State for the appropriation of real estate for rights of way of railroads, as provided by an act of the general assembly of the State of Indiana, in force May 6, 1853, and all acts amendatory thereof: And *Provided, further*, That nothing in this act contained shall in any manner abridge or impair the rights of incorporated towns and cities by their respective councils, boards of aldermen or boards of trustees to grant to such corporations or companies the privilege to use and occupy the streets and alleys of such cities and towns for the purpose of laying mains for conveying gas to their patrons. Burns § 5140.

Contests between Conflicting Claimants.

If there are diverse or conflicting claimants to the money or any part of it to be paid as compensation for the real estate taken, the Court may direct the money to be paid into said court by said company, corporation or voluntary association until it can determine who is entitled to the same, and shall direct to whom the same shall be paid, and may, in its discretion order a reference to ascertain the facts on which said determination and order are to be made. Burns § 5141.

Practice. Amendments. Unknown Parties.

The Court shall appoint some competent attorney to appear for and protect the rights of any party in interest who is unknown and who has not appeared in the proceedings by an attorney or agent. The Court shall also have power at any time to amend any defect or informality in any of the special proceedings authorized by this Act as may be necessary, or to cause new parties to be added, and to direct such further notice to be given to any party in interest as it deems proper, and also to appoint other commissioners in the place of any who shall

die or refuse or neglect or be unable to serve, or who may leave or be absent from the State. Burns § 5142.

Proceedings De Novo. Limitations on Condemnor's Rights.

At any time after an attempt to acquire title by appraisal of damages or otherwise, if it shall be found that the title thereby attempted to be acquired is defective, the company, corporation or voluntary association may proceed anew to acquire or perfect the same in the same manner as if no appraisal had been made: *Provided*, That the provisions of this Act shall not be construed to give to any person, corporation or association the right to enter upon lands and dig or prospect for natural gas or oil, or to take any lands for the purpose of digging or boring any wells, but it shall be construed to give the right to take the right of way for pipe lines only: And *Provided, further*, That no person or corporation shall have the right to condemn or take any lands, or lay their pipe lines within seventy-five yards of any dwelling or barn, unless the owner shall agree in writing that the same may be placed within such distance, except when the line of such pipes shall be along a public highway. Burns § 5143.

Right of Way to Gas Companies.

That whenever any corporation or voluntary association, organized under the laws of the State of Indiana, or which may hereafter be incorporated thereunder for the purpose of manufacturing, piping, distributing or selling artificial or other gas for heat, light, fuel, or power or whenever any person or corporation engaged in the business of manufacturing, piping, distributing or selling artificial or other gas for heat, light, fuel, or power, and furnishing the same to its patrons within this State, shall desire to dig trenches and lay, maintain or repair pipes or mains outside of the limits of corporate cities or towns for the purpose of conducting and distributing gas or its products to its patrons within this State, or from its manufactory to its patrons at any point within this State, such person, corporation or voluntary association shall have the rights and pow-

ers conferred upon and granted to, and be subject to the liabilities and restrictions imposed upon corporations organized for the purpose of drilling and mining for petroleum or natural gas and marketing the same by an Act entitled "An Act to authorize companies organized for the purpose of drilling and mining for petroleum or natural gas and marketing the same to appropriate and condemn real estate and declaring an emergency," approved February 20, 1889. Act. 1907, p. 340. Burns § 5144.

Special Power to Board of Trustees.

That the subscribers to the capital stock of any company, corporation or voluntary association, organized for the purpose of furnishing natural or artificial gas for fuel or for illuminating purposes, or for furnishing electric lights or water to the citizens of any village, town or city within the State of Indiana, may, by written stipulation at the time of making subscriptions to the capital of said company, corporation or voluntary association, and with one another, that the power of holding and voting said capital stock may be irrevocably given to a board of trustees or a majority of them, which said board of trustees may be selected in such manner as the articles of incorporation may provide. Act 1889, p. 91. Burns § 5145.

Section 5145 Made Retroactive.

That any such agreement heretofore made by the subscribers to the capital of any company, corporation or voluntary association organized for the purposes set forth in the preceding section, shall be valid and binding upon said subscribers to the capital stock and their assigns. Burns sec. 5146. *Id.*

Five Mile Limit to City Gas Companies.

That any gas light or water works company in any city or town of this State shall be authorized and empowered to extend their pipes and mains beyond the corporate limits of such city or town, not to exceed a distance of five miles from the corporate limits of any such city or town, for the purpose of supply-

ing persons or corporations with gas or water, and any such company shall be authorized and empowered to furnish and supply gas or water to any persons or corporations residing or located within five miles of the corporate limits of any such city or town. Act 1883, p.17. Burns § 5073.

Assessment of Gas Companies.

The personal property of gas and coke companies, natural gas companies, electric light companies, water works companies and hydraulic companies shall be listed and assessed in the township, town or city where the principal works are located; the mains, pipes and wires of such companies laid in or along roads, streets or alleys shall be listed as personal property in the township, city or town where the same are laid or placed. Act 1891, p. 199. Burns § 10,166.

Annual Statement to Assessor.

Every street railroad, water works, gas, manufacturing, mining, gravel road, plank road, saving(s) bank, insurance and other associations incorporated under the laws of this State (other than railroad companies and those heretofore specifically designated) shall, by its president or other proper accounting officer, between the first day of March and the fifteenth day of May of the current year, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized, and the number of shares in which such capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if no market value, then the actual value of the shares of stock.

Fifth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The value of all tangible property.

Seventh. The difference in value between all tangible property and the capital stock.

Eighth. The name and value of each franchise or privilege owned or enjoyed by such corporation.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of State. In case of the failure or refusal to make report, such corporations shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the fifteenth day of May, to be sued and recovered in any proper form of action in the name of the State of Indiana, on the relation of the prosecuting attorney, such penalty when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of ten dollars to be taxed as costs in such action. Act of 1891, p. 199. Amended 1903, p. 49. Burns sec. 10233.

Tax Schedule.

Such statement shall be scheduled by the assessor and such schedule, with the statement so scheduled, shall be returned by the assessor to the county auditor. The auditor shall annually, on the meeting of the county board of review, lay before said board the schedule and statements herein required to be returned to him, and said board shall value and assess the capital stock and all franchises and privileges of such companies or associations in the manner provided in this Act, and the said auditor shall compute and extend the taxes for all purposes on the respective amounts so assessed, the same as may be levied on other property in such towns, cities or other localities in which such companies or associations are located. In all cases where the capital stock of any such corporation exceeds in value that of the tangible property listed for taxation, then such capital stock shall be subject to taxation upon such excess of value; where no tangible property is returned or found, and the capital stock has a value; it shall be assessed for its true cash value. But where the capital stock, or any part thereof, is invested in tangible property, returned for taxation, such capital stock shall not be assessed to the extent that is so invested. Every fran-

chise or privilege of any such corporation shall likewise be assessed at its true cash value. Where the full value of any franchise is represented by the capital stock listed for taxation then such franchise shall not itself be taxed; but in all cases where the franchise is of greater value than the capital stock, then the franchise shall be assessed at its full cash value, and the capital stock in such case shall not be assessed. Burns sec. 10234.

Assessment, How Enforced.

In case of the failure or refusal of the person or persons, joint stock associations, companies or corporations, their officers, agents or employees specified in the preceding section to make and return the statements and reports therein provided for, the auditor of State shall make out such returns, statements and valuations from the best information he can obtain, and for that purpose he shall have power to summon and examine, under oath, any person whom he may believe to have a knowledge thereof. And he shall add to such valuation twenty-five per centum thereon. Burns § 10235.

Minute Directions for Plugging Wells. Notice to Supervisor.

That before the casing shall be drawn from any well drilled into gas or oil-bearing rock for the purpose of abandoning the same, it shall be the duty of any person, firm or corporation having the custody of such well, or having charge of removing the casing therefrom for the purpose of abandoning the same, at the time of such abandonment, to properly and securely stop and plug each of said wells so abandoned in the following manner: Such hole shall first be solidly filled from the bottom thereof to a point at least twenty-five (25) feet above such gas or oil-bearing rock with sand, gravel or pulverized rock, on the top of which filling shall be seated a dry pine wood plug not less than two (2) feet long and having a diameter of one-fourth of an inch less than the inside diameter of the casing in such well; above such wooden plug such well shall be solidly filled for at least twenty-five (25) feet with the above-mentioned filling ma-

terial, immediately above this shall be seated another wooden plug of the same kind and size as above provided, and such well shall again be solidly filled for at least twenty-five (25) feet above said second plug with such filling material. After the casing has been drawn from such well there shall immediately be seated at the point in said well where such casing was seated a cast-iron ball, the diameter of which ball shall be greater than that of the hole below the point where such casing was seated, and above such ball such well shall again be solidly filled with the above-mentioned filling material for a distance of fifty (50) feet. Any person, firm or corporation owning or having charge or supervision of any well which has been drilled into gas or oil-bearing rock, or having charge or control of removing the drive pipe or casing from any such well, and from which the drive pipe and casing or the drive pipe alone has been or shall be pulled leaving therein the tubing casing, or both, shall give notice to the State natural gas supervision (supervisor), and under the supervision and direction of said supervisor, or one of his assistants, shall plug such tubing, where such tubing only remains in such well, and shall fill from the bottom up not less than three hundred (300) feet with cement and clean sand, one part Portland cement to four parts of sand, and where the casing and tubing remains in any such well, such well shall be filled on the packer with not less than fifty (50) feet of Portland cement and sand, and if there be no such packer, with not less than one hundred (100) feet of Portland cement and sand in the proportions hereinbefore indicated, and in all cases where the drive pipe and casing or either the drive pipe or casing are removed from any such well and the tubing is left therein said tubing shall be plugged as herein provided, and if any part of the tubing, drilling-stem or other substance prevent the plugging of any such well or wells as hereinbefore provided, such well or wells shall be filled to a point within twenty-five (25) feet of the top part of said tubing, drill-stem or substance with sand, gravel or crushed stone, and shall thereupon be filled to a point twenty-five (25) feet above such part of tubing, drill-stem or substance with Portland cement and sand, all proportioned as above provided. Act 1909, p. 234.

Duties of Supervisor. Fee.

Any person, firm or corporation, before proceeding to plug any such well so drilled into any gas or oil-bearing rock, or to pull the casing or drive pipe therefrom, shall notify the State natural gas supervisor, or one of his authorized assistants, of such intention, and the time and place where such plugging is to be done, and it shall be the duty of said natural gas supervisor or his duly authorized assistants to be present in person all the time while such plugging is being done, and the same shall be done under his instructions and supervision, and such person, firm or corporation so plugging such well shall file, or cause to be filed, in the office of the recorder of the county in which any such well is located, within fifteen days after the same has been plugged, as provided in section one (1) hereof, a written statement of such State natural gas supervisor, or his duly appointed assistant, showing that such well was duly plugged under his personal supervision and instruction and in the manner herein prescribed and required, which statement shall be recorded in the miscellaneous records in the office of such recorder. And for supervising and superintending the plugging of any such well, said person, firm or corporation plugging such well or having the same done, shall pay in advance of doing any such work or plugging a fee of five dollars (\$5.00) to the State natural gas inspector or his assistants, to be by them turned into the State Treasury. *Id.*

Assistants to Natural Gas Supervisor.

SEC. 3. For the purpose of enforcing the provisions of this act and supervising the plugging of said wells the State natural gas inspector shall appoint such assistants as he may deem necessary, who shall receive for their services for such supervision in the plugging of each well the sum of five dollars (\$5.00), to be paid by the Treasurer of State each month, upon a warrant drawn by the Auditor of State, upon a verified statement made by said assistants showing the wells plugged by him during such month, their location, the date when plugged and by whom the fee has been paid, and file the same with the auditor of State.

Such verified statement shall, before any warrant is drawn thereon or therefor, be approved by the State natural gas supervisor, and in no event shall any such assistant be paid any such fee until the same shall have been (paid) into the treasury of State as herein provided. *Id.*

Protection against Salt Water or Oil.

SEC. 4. It shall be the duty of every person, firm or corporation who sinks or maintains a well to the depth of the oil or salt-bearing strata to prevent the salt water or oil of such well from flowing into fresh water strata of that or any other well. *Id.*

Casing Out Fresh Water.

SEC. 5. It shall be the duty of any person, firm or corporation sinking a well into any gas or oil-bearing rock, or maintaining the same after it has been sunk, to case off and keep cased off all fresh water from such well until such well has been plugged as herein provided. *Id.*

Police Powers of Supervisor.

SEC. 6. For the purpose of enforcing the provisions of this Act the State natural gas supervisor is hereby authorized and empowered to enter upon any land at any time for the purpose of examining or testing any such well or wells for the purpose of plugging the same, and said supervisor and his assistants are hereby given police power to arrest persons found violating any of the provisions of this Act. *Id.*

Penalty.

SEC. 7. Any person, firm or corporation violating any of the provisions of this act shall, on conviction, be fined in any sum not less than one hundred dollars nor more than one thousand dollars, to which may be added imprisonment in the county jail not to exceed six months. *Id.*

Sections 8 and 9 are the Repealing and Emergency Sections.

KANSAS.**No Well within 100 Feet of Right of Way.**

Par. 10. It shall be unlawful for any person, firm, company or corporation in this State to drill or operate gas or oil wells within one hundred feet of the center of the right of way of any steam or electric line of railway. Act 1905, chap. 210, G. S. § 4978.

Penalty.

Par. 11. Any person, firm, company or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred nor more than one thousand dollars. *Id.* G. S. § 4979.

Strength of Gas Mains.

Par. 12. That any person or persons, firm, company or corporation engaged in drilling for, piping, transporting, using or selling natural gas may transport or conduct the same through sound wrought or cast-iron or steel casings and pipes tested to at least four hundred pounds pressure to the square inch. Act. 1905, ch. 312. G. S. § 4980.

Increase Flow Forbidden.

Par. 13. It is hereby declared to be unlawful for any person or persons, firm, company or corporation to use any devise for pumping, or any other artificial process or appliance that shall have the effect of increasing the natural flow of natural gas out of any well. *Id.* G. S. § 4981.

Penalty. Shooting Well Proviso.

Par. 14. Any person or persons, firm, company or corporation violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than one hundred dollars or more than ten

thousand dollars, and may be enjoined from conveying and transporting natural gas through pipes otherwise than in this Act provided: *Provided*, That nothing in this section shall operate to prevent the use of nitroglycerine or other explosives for shooting any well or wells from which the gas is procured. *Id.* G. S. § 4982.

Casing Wells to Exclude Water.

SEC. 26. That the owner or operator of any well put down for the purpose of exploring for and producing oil or gas shall, before drilling into the oil or gas-bearing rock, encase the well with good and sufficient wrought iron, oil-well casing, and in such manner as to exclude all surface or fresh water from the lower part of such well, and from penetrating the oil or gas-bearing rock. Should any well be put down through the first into a lower oil or gas-bearing rock, the same shall be cased in such manner as will exclude all fresh or salt water from both upper and lower oil or gas-bearing rocks penetrated. Act 1891, chap. 151, G. S. 4983.

Plugging Well.

SEC. 27. The owner of any well, when about to abandon or cease operating the same, for the purpose of excluding all fresh or salt water from penetrating the oil or gas-bearing rock or rocks, and before drawing the casing, shall fill the well with sand or rock sediment to the depth of two feet below the top of each oil or gas-bearing rock, and drive therein a round, seasoned wooden plug at least two feet in length, and in diameter equal to the full diameter of the well below the casing and immediately upon drawing the casing, shall fill in on top of such plug with sand or rock sediment to the depth of five feet, and again drive into the well a round wooden plug three feet in length, the lower end tapering to a point, and to be of the same diameter at the distance of eighteen inches from the smaller end as the diameter of the well below the point at which it is driven; and after such plug has been driven, the well shall be filled with

sand or rock sediment to the depth of twenty feet. *Id.* G. S. § 4984.

\$500 Fine.

SEC. 28. Any owner or operator or person, who shall violate the provisions of the preceding sections of this Act, shall be guilty of a misdemeanor, and shall be fined in the sum of five hundred dollars for each and every offence, which fine when collected shall be paid to the school fund of the county in which the well is situated. *Id.* G. S. § 4985.

Record of Surrender of Lease.

SEC. 1. When any oil, gas or other mineral lease heretofore or hereafter given on land situated in any county of Kansas and recorded therein shall become forfeited it shall be the duty of the lessee, his successors or assigns within sixty days from the date of the taking effect of this Act, if the forfeiture occurred prior thereto and within sixty days after the date of the forfeiture of any other lease, to have such lease surrendered in writing, such surrender to be signed by the party making the same, acknowledged and placed on record in the county where the leased land is situated without cost to the owner thereof; provided that if the said lessee, his successors or assigns shall fail or neglect to execute and record such surrender within the time provided for, then the owner of said land may serve upon said lessee, his successors or assigns, in person or by registered letter, at his last known address, or by publication for three consecutive weeks in a newspaper of general circulation in the county where the land is situated, a notice in writing in substantially the following form:

To I, the undersigned owner of the following described land situated in county, Kansas, to wit: (Description of land) upon which a lease, dated day of, 19...., was given to, do hereby notify you that the terms of said lease have been broken by the owner thereof, that I hereby elect to declare and do declare the said lease forfeited and void and that, unless you do, within twenty

days from this date, notify the register of deeds of said county as provided by law, that said lease has not been forfeited, I will file with the said register of deeds affidavit of forfeiture as provided by law; and I hereby demand that you execute or have executed a proper surrender of said lease and that you put the same of record in the office of the register of deeds of said county within twenty days from this date.

Dated this day of, 19

Proof of Forfeiture by the Owner.

And the owner of said land may after twenty days from the date of service, registration or first publication of said notice, file with the register of deeds of the county where said land is situated an affidavit setting forth that the affiant is the owner of said land, that the lessee, or his successors or assigns, has failed and neglected to comply with the terms of said lease, reciting the facts constituting such failure; that the same has been forfeited and is void; and setting out in said affidavit a copy of the notice served, as above provided and the manner and time of the service thereof. If the lessee, his successors or assigns, shall within thirty days after the filing of such affidavit, give notice in writing to the register of deeds of the county where said land is located that said lease has not been forfeited and that said lessee, his successors or assigns still claims that said lease is in full force and effect, then the said affidavit shall not be recorded, but the register of deeds shall notify the owner of the land of the action of the lessee, his successors or assigns, and the owner of the land shall be entitled to the remedies now provided by law for the cancellation of such disputed lease. If the lessee, his successors or assigns shall not notify the register of deeds as above provided, then the register of deeds shall record said affidavit and thereafter the record of the said lease shall not be notice to the public of the existence of the said lease or of any interest therein or rights thereunder and said record shall not be received in evidence in any court of the state on behalf of the lessee, his successors or assigns, against the lessor, his successors or assigns. Act of 1915, p. 284, G. S. § 4992.

Record Not to Be Notice of Indefinite Term.

SEC. 2. That when an oil, gas or mineral lease is hereafter given on land situated within the State of Kansas, the recording thereof in the office of the register of deeds of the county in which the land is located shall impart notice to the public of the validity and continuance of said lease for the definite term therein expressed, but no longer; *provided*, that if such lease contains the statement of any contingency upon the happening of which the term of any such lease may be extended (such as "and as much longer as oil and gas or either are produced in paying quantities"), the owner of said lease may at any time before the expiration of the definite term of said lease file with said register of deeds an affidavit setting forth the description of the lease, that the affiant is the owner thereof and the facts showing that the required contingency has happened. This affidavit shall be recorded in full by the register of deeds, and such records, together with that of the lease, shall be due notice to the public of the existence and continuing validity of said lease until the same shall be forfeited, canceled, set aside or surrendered according to law. *Id.* G. S. § 4993.

Action on Failure to Release.

Par. 19. Should the owner of such lease neglect or refuse to execute a release as provided by this Act, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and he may also recover in such action of the lessee, his successors or assigns, the sum of one hundred dollars as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and he may also recover any additional damages that the evidence in the case will warrant. In all such actions, writs or attachment may issue as in other cases. Act 1909, ch. 179, G. S. 4994.

Proof of Demand for Release.

Par. 20. At least twenty days before bringing the action provided for in this Act, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder

of the lease (if such demand by ordinary diligence can be made in this State), that said lease be released of record. Such demand may be either written or oral. When written, a letterpress or carbon copy thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original. *Id.* G. S. § 4995.

County Gas Inspector.

Par. 24. In each county in this State the board of County commissioners is hereby authorized, in its discretion, to appoint a suitable and competent person, who shall not be interested privately in producing, piping or selling natural gas, to be known and designated as the "gas inspector" of such county, who shall serve for a term of two years from the date of his appointment and qualification and until his successor shall be appointed and qualified: *Provided*, That said board may end said term by an order to that effect at any time after the expiration of said period of two years without appointing such successor. Act 1905, ch. 313, G. S. § 5000.

Oath and \$3,000 Bond.

Par. 25 He shall be required, before assuming the duties of his office, to take and subscribe an oath or affirmation that he will faithfully, impartially and to the best of his skill and ability discharge his duties, which oath or affirmation shall be filed with the county clerk of the county for which he is appointed, and within ten days after his appointment he shall file with said county clerk a good and sufficient bond to the people of the State of Kansas, with a resident surety or sureties to be approved by said county commissioners, in the sum of three thousand dollars, conditioned for the faithful performance of his duties. *Id.* G. S. § 5001.

Duty to Report Wells.

Par. 26. All persons are hereby required to report in writing, by mail or otherwise, to said inspectors, within thirty days after their appointment and qualification, the location and num-

ber of all wells in the county of such inspector belonging in whole or part to them or which are upon premises owned in whole or part by them, except only such wells as have already been reported to some predecessor of said inspector, and they shall also report to him in writing the number and location of each of such gas wells thereafter drilled within two days after its completion. *Id.* G. S. 5002.

Duty to Report Violation.

Par. 27. It shall be the duty of such inspector to see that all provisions of law pertaining to the drilling for gas, the regulating of gas wells and the piping and consumption of natural gas are faithfully carried out, and that the penalties of such laws are enforced against all violators of the same; and to that end he shall promptly report all violations of such laws that come to his knowledge to the county attorney of his county, and file a proper complaint for the prosecution of the offender. *Id.* G. S. § 5003.

Record of Inspections.

Par. 28. Said inspector shall inspect all gas wells in his county. He shall measure and record, as nearly as can be ascertained, the initial rock-pressure of, and also the volume of gas produced by, each of such wells. Such inspection shall be made and measurements taken and recorded at least once in each six-months' period during his term of office, and at any other time or times directed by the board of county commissioners. All such records shall be entered and kept in substantially bound record books, suitably ruled, printed, indexed and arranged for that purpose, to be provided by the county and kept in the office of the register of deeds subject to public inspection. *Id.* G. S. § 5004.

Inspection of Pipe Lines.

Par. 29. Such inspector shall also inspect all natural gas pipe lines in his county at least once in every period of six months during his term of office, and as much oftener as may

be necessary or as may be directed by the board of county commissioners, and shall test and record the pressure of the gas therein and the volume of the flow through the same, as nearly as is practicable. If he shall discover any leakage or waste of gas from any such well or pipe line, he shall notify the owner thereof, or his agents or servants, or some one of them, of that fact, and if such leakage or waste be not stopped within two days after such notice, it shall be and it is hereby made the duty of such inspector to take such steps and make such changes and repairs as may in his judgment be necessary to stop said waste or leakage; and he shall have a lien upon said well or pipe line and all wells with which the same may be connected for the material, labor and cost of making such repair, for the enforcement of which, with all costs of suit, and a reasonable attorney's fee, an action may be maintained by said inspector in any court of competent jurisdiction; and if gas shall be taken from any well at a rate such as to consume more than fifty per cent. of its daily production, it shall be deemed a waste within the meaning of this clause to the extent of such excess. If any owner of any such well or pipe line, or any agent or servant of such owner in charge and control of such well or pipe line, shall for more than two days after the service of the notice last aforesaid fail to stop the leakage or waste by this clause prohibited, such owner, agent or servant shall be guilty of a misdemeanor, and on conviction thereof shall be fined a sum of not less than twenty-five dollars nor more than five hundred dollars for each offense, and each day that such failure continues after the expiration of the said period of two days, shall constitute a separate offence. *Id.* G. S. § 5005.

Interference with Inspector.

Par. 30. No person or persons in this State owning or having control of natural gas wells or natural gas pipe lines shall refuse to allow the same to be inspected by the natural gas inspector, nor shall any such person interfere with said inspector, directly or indirectly in the performance of his duties as herein prescribed, and it is made the duty of all such persons to furnish said inspector reasonable facilities and opportunity to make any in-

spection or perform any duty hereby authorized. *Id.* G. S. § 5006.

Deputy Inspectors.

Par. 31. The inspector provided for in this Act is hereby authorized, with the consent and approval of the board of county commissioners, to appoint and assign for duty deputies, not exceeding two in number, at such time and for such terms as in his judgment may be necessary to enable him promptly to perform all the duties of his office. Such deputies shall have the same qualifications as the inspector, and under his direction are empowered to perform all the duties of the inspector. Said inspector shall be liable for all acts or omissions of his deputies in the performance of their duties. Each deputy, before he enters upon the duties of his office, shall execute a bond to the inspector, with sureties to be approved by him, in the sum of one thousand dollars, which shall be filed with the inspector, and shall be conditioned for the faithful performance of the duties of such deputies. The said inspector shall provide himself and deputies with proper standard instruments and appliances for use in the performance of his and their duties in making the tests and records herein designated. *Id.* G. S. § 5007.

Par. 32. Any person violating any of the foregoing provisions of this Act, except those for the violation of which penalties are especially prescribed, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of not less than twenty-five dollars nor more than five hundred dollars. *Id.* § 5008.

Per Diem of Inspectors.

Par. 33. The compensation of such inspectors shall be five dollars per day for the time actually and necessarily consumed by them in the performance of their duties as herein prescribed, and the compensation of each deputy inspector shall be four dollars per day for each day actually and necessarily consumed by him in the performance of his duties as herein prescribed, and the same shall be paid by the county in which

such service is performed, upon allowance by the board of county commissioners, as other claims against such county. *Id.* § 5009.

Appointment of County Inspector to Supervise Plugging.

SECTION 1. For the purpose of carrying out the provisions of section 3919 of the General Statutes of 1909. The Board of county commissioners of each county in the State of Kansas in which oil or gas wells have been drilled or may hereafter be drilled may appoint some suitable person who has had at least two years' experience in drilling and operating oil or gas wells and who is not directly interested in the production of gas or oil to personally direct and supervise the plugging of oil or gas wells sought to be plugged, whose terms of service shall be at option of the county commissioners, but who shall serve until his successor is appointed. *Act of 1913, p. 345, G. S. § 4986.*

Operator to Notify Inspector.

SEC. 2. Whenever it shall become necessary to plug any well as required by law the lessee or operator shall notify in writing the inspector of oil and gas wells at his office or residence, whereupon he shall repair as soon as possible to said well and supervise the plugging thereof. *Id. G. S. § 4987.*

Log of Well to Inspector.

SEC. 3. Upon the arrival of the said inspector at the wells to be plugged the lessee or operator shall furnish to the inspector a record of the drilling of said well verified under oath showing a true log of such well. *Id. G. S. § 4988.*

Penalty.

SEC. 4. Any person, corporation or copartnership violating any of the provisions of this act shall upon conviction thereof be deemed guilty of a misdemeanor, and upon conviction be fined in a sum of not more than \$500 or by imprisonment in

the county jail not more than six months, or by both such fine and imprisonment. *Id.* G. S. § 4989.

Oil Inspector to Be Paid by Operator.

SEC. 5. The oil well inspector shall receive a sum of \$5.00 per well and actual traveling expenses while in performance of his duties of inspection; provided, also, that the cost of said inspection shall be paid by the owner or operator of said wells. *Id.* G. S. § 4990.

Protection of City Water Supply.

SECTION 1. That all persons, companies or corporations are hereby prohibited from wilfully, carelessly or negligently permitting or causing any salt water, oil or other polluting substances to flow into any stream, lake or reservoir within the State of Kansas, so as to render said water deleterious for use for domestic purposes, which furnishes any city within said State with its water supply for domestic purposes. Act, 1917, p. 346.

Penalty. Limitation.

SEC. 2. That any violation of section 1 of this Act shall be a misdemeanor, punishable by fine of not less than twenty-five dollars, nor more than one hundred dollars, and each separate day on which said section 1 may be violated shall constitute a separate offence: *Provided*, that all prosecutions under this act must be begun within ninety days after the commission of the offence. *Id.*

Pipe Lines Are Common Carriers.

Par. 58. All pipe lines laid, built or maintained for the conveyance of crude oil within the State of Kansas are hereby declared to be common carriers, and said conveyance of said oil shall be in the manner and under the restrictions in this Act provided. Act 1905, ch. 315, G. S. § 5035.

Pipe Line to Provide Storage.

Par. 59. It shall be the duty of every person, firm, association or corporation operating under such pipe line to provide suitable and necessary receptacles for receiving such oil for transportation and for storage at the place of delivery until the same can be reasonably removed by the consignee, and shall be liable therefor from the time the same is delivered for transportation until a reasonable time after the same has been transported to the place of consignment and ready for delivery to the consignee. It shall be the duty of every such person, firm, association or corporation to receive and forward such oil as shall be offered for shipment in the order of application therefor, upon the applicant's complying with the rules herein provided for as to delivery and payment for such transportation. Such common carrier shall issue to the shipper a certificate showing the actual quantity and specific gravity thereof; but no application for such transportation shall be valid beyond or for a greater quantity than the applicant has ready for delivery at the time of making such application. *Id.* G. S. § 5036.

Fixed Rates for Carriage.

Par. 60. It shall be unlawful for any such person, firm, association or corporation to charge for the transportation of such crude oil through its line in excess of the following rates for each barrel of forty-two gallons transported: Six miles and less, five cents; over six miles and not more than fifteen miles, six cents; over fifteen miles and not more than forty miles, seven cents; over forty miles and not more than eighty miles, eight cents; over eighty miles and not more than one hundred miles, ten cents; over one hundred miles and not more than one hundred and fifty miles, fifteen cents; over one hundred and fifty miles and not more than two hundred miles, twenty cents; over two hundred miles and not more than two hundred and fifty miles, twenty-three cents; over two hundred and fifty miles and not more than three hundred miles, twenty-five cents. *Id.* G. S. § 5037.

Railroad Commissioners to Control.

Par. 61. The State board of railroad commissioners shall have the general supervision and control over all such persons, firms, associations or corporations in the performance of said business, and shall prescribe reasonable rules for the conduct thereof, which rules, when prescribed and delivered in writing to any such person, firm, association, or corporation, shall be printed and posted up in a convenient, accessible and conspicuous place at each office, station or place of business where such oil is received or delivered. The State board of railroad commissioners is hereby authorized to prescribe reasonable maximum rates, not exceeding the rates set forth in section 3 hereof, which shall be charged for the transportation of such oil, which rate shall be binding on every such person, firm, association or corporation after its publication in the official State paper: *Provided*, The reasonableness of such rates may be tested by proceedings therefor in any court of competent jurisdiction in this State, and such court shall, upon hearing the same, make such order as shall be proper, and such order may be reviewed by the Supreme Court as other civil proceedings, regardless of sum or value involved; *Provided*, Before beginning such proceedings in court to test such matters, such person, firm, association or corporation shall execute a bond to the State of Kansas in such reasonable sum as the judge of the court in which such matter is brought shall order, conditioned that the person, firm, association or corporation making such application will promptly pay to any shipper the difference between the rate received for transporting oil and the rate finally ordered by such court. When such maximum rates shall be fixed by the State board of railroad commissioners, the rates prescribed in section 3 of this Act shall cease to be of force, and the rates so fixed by the State board of railroad commissioners shall govern, as in this section provided. *Id.* G. S. § 5038.

Statutory Damages.

Par. 62. Any such person, firm, association or corporation which shall fail or refuse to accept, transport and deliver oil

when offered, up to the full capacity of such pipe line, at rates not to exceed those provided for by this Act, or shall fail, neglect or refuse to obey any rule so established by the State board of railroad commissioners, shall be liable to the person injured by such failure or refusal in the sum of five hundred dollars liquidated damage, together with reasonable attorney's fees, to be fixed by the Court, in case suit shall be brought therefor; such liquidated damages and attorney's fees to be recovered in any Court of competent jurisdiction; and in case of any corporation so refusing or failing, the charter board is hereby authorized to revoke the charter or permit to do business in this State of such corporations. *Id.*, G. S. § 5039.

Escape of Gas.

Sec. 1. That it shall be unlawful for any person, firm or corporation having possession or control of any natural gas or oil well, whether as a contractor, owner, lessee, agent, or manager, to use or permit the use of gas by direct well pressure for pumping of oil or for blowing oil out of wells, or for operating any machinery by direct well pressure of gas, or to allow or permit the flow of gas or oil from any such well to escape into the open air without being confined within such well or proper pipes or other safe receptacle for a longer period than two days after gas or oil shall have been struck in such well: *Provided*, That a reasonable time, not exceeding five days, shall be allowed such contractor, owner, lessee, agent, or manager, in addition to said two days, in which to place in said well the casing, tubing, packer's and other appliances necessary to properly operate the same and obtain the products therefrom, or, in case such contractor, owner, lessee, agent, or manager shall not desire to operate such well, to securely enclose the same, so as to prevent the escape of oil or gas therefrom, and thereafter all such gas or oil shall be safely and securely confined in such well, pipes, or other proper receptacle: *And provided, further*, That the provisions of this section shall not be construed to apply to the escape of gas or oil during continuous drilling. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall be fined in the sum

of not less than fifty dollars, nor more than two hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, and each day that the violation continues shall constitute a separate offense. Act 1901, ch. 224, G. S. § 4970.

Flambeau Lights Prohibited.

Sec. 2. That it shall be unlawful for any company, corporation, or person, for hire, pay, or otherwise, to use natural gas for illuminating purposes in what are known as "flambeau" lights in cities, towns, highways, or elsewhere; *providing*, that nothing herein contained shall be so construed as to prohibit any such company, corporation, or person from the necessary use of such gas in what are known as "Jumbo" burners; enclosed in glass globes or lamps, or by the use of other burners of similar character so enclosed as will consume no more than said "Jumbo" burners. *Id.* G. S. § 4971.

Jumbo Burners.

Sec. 3. All gas lights made through said "Jumbo" burners enclosed in glass globes or lamps used in all public streets, and elsewhere outside of buildings, shall be turned off not later than eight o'clock in the morning each day such lights or burners are used, and the same shall not be lighted between the hours of eight o'clock a. m., and five o'clock p. m. *Id.* G. S. § 4972.

Penalty.

Sec. 4. Any person, company or corporation violating any of the provisions of sections 2 and 3 of this Act shall be deemed guilty of a misdemeanor, and be fined in the sum of not less than fifty dollars nor more than two hundred dollars. *Id.* G. S. § 4973.

Interfering with Pipes.

Sec. 5. That it shall be unlawful for any person, in any manner whatsoever, to change, injure, extend, or alter, or cause to

be changed, injured, extended, or altered, any surface or other pipe or attachment of any kind connecting or through which natural or artificial gas is furnished from the gas mains or pipes of any person, company, or corporation without first procuring from such person, company, or corporation written permission to make such change, extension, or alteration. *Id.* G. S. § 4974.

Connection and Cut-offs.

Sec. 6. That it shall be unlawful for any person to make or cause to be made any connection or re-connection with the gas mains or surface pipes of any person, company, or corporation furnishing natural gas, or to turn on or off or in any manner interfere with any valve, stop-cock, or other appliance belonging to such person, company, or corporation and connected with its surface or other pipes, or alter or injure the orifice of mixers, or to use natural gas for heating purposes except through mixers, without first procuring from such person, company, or corporation a written permit to turn on or off such stop-cock or valve, or to make such connections or re-connections, or to alter or injure the orifice of mixers, or to interfere with the valves, stop-cocks, or other appliances of such person, company, or corporation, as the case may be. *Id.* G. S. § 4975.

Firing or Interfering with Gas Wells.

Sec. 7. That it shall be unlawful for any person or persons to set fire to any gas escaping from wells, broken or leaking mains, pipes, valves, or other appliances used by any person, company, or corporation in conveying gas, or to interfere in any manner with the wells, machinery, or property of any person, company, or corporation engaged in drilling for natural gas or in furnishing the same, unless employed by or acting under the authority or direction of such person, company, or corporation engaged in so furnishing gas. *Id.* G. S. § 4976.

Fines and Damages.

Sec. 8. Any person violating any of the provisions of sections 5, 6 and 7 of this Act shall be deemed guilty of a mis-

demeanor, and, upon conviction, shall be fined not less than twenty-five dollars nor more than one hundred dollars, and shall be liable to the said person, company, or corporation, whose property was so changed, injured, altered, or destroyed, in a civil action for the amount of damages sustained, together with all the costs in the case. *Id.* G. S. § 4977.

Wells Required to Case against Salt Water.

Section 1. If any well or other excavation be put down to or through any vein or strata containing salt water or water containing any minerals in appreciable quantities, it shall be the duty of the owner or operator, driller or person putting down such well or excavation to case or plug such well or excavation in such manner as to exclude all salt water or water containing minerals in appreciable quantities from both upper and lower veins or strata holding water suitable for domestic purposes. Act 1919, p. 309.

Injunction to Enforce the Act.

SEC. 2. All persons, companies or corporations, private or municipal, owning or controlling a supply of water for domestic purposes, injured or threatened with injury by a violation of the provisions of section 1 of this Act, shall be entitled to a remedy by injunction, mandatory or prohibitive, in any Court of competent jurisdiction against any person, company or corporation causing or threatening to cause such injury. *Id.*

Penalty. Limitation.

SEC. 3. Any violation of section 1 of this Act shall be a misdemeanor, punishable by fine of not more than \$1,000. Prosecutions under this Act must be begun within six months after the commission of the offense. *Id.*

KENTUCKY.

Right of Eminent Domain Conferred.

All corporations or companies organized for the purpose of

constructing, maintaining or operating oil or gas well or wells or pipe line or lines for conveying, transporting or delivering oil or gas, or both oil and gas, are hereby vested with the right and power to condemn lands and material in this Commonwealth, or the use and occupation of so much thereof as may be necessary for constructing, maintaining and operating such pipe line, or lines, and all necessary machinery, pumping stations, appliances and fixtures, including tanks, telephone and telegraph lines, for use in connection therewith, together with the rights of ingress and egress to examine, alter, repair, maintain and operate or remove such pipe line or lines, all such being hereby declared to be a public use; and when any such corporation or company desires to construct oil or gas pipe line or lines, or both, for the purpose of conducting, transporting or delivering oil or gas, or both, over the lands of others, shall be unable to contract or agree with the owner or owners of land or material necessary for its use for said purpose, it may, in the mode prescribed for the condemnation of land for railroads, condemn the use of so much of said land as may be necessary for the purpose of constructing, maintaining and operating such pipe line or lines, and all necessary machinery, pumping stations, appliances and fixtures, including necessary tanks, telephone and telegraph lines, and including rights of ingress and egress to examine, alter, repair, maintain and operate or remove the same. Act March 20, 1900, Ky. St. § 3766 B.

Preamble.

WHEREAS, It is most injurious and detrimental to oil and gas wells and contiguous and adjacent land, and even detrimental to oil and gas lands in the neighborhood, and especially land in close proximity to an oil well, either dry or producing, that casing be taken from said well without plugging same, so as to prevent the surface water that may enter said well flowing underground to and destroying other oil and gas wells in close proximity to same.

BE IT ENACTED by the General Assembly of the Commonwealth of Kentucky:

Series of Plugs Required.

It shall be unlawful for any person or persons, corporations or companies to abandon any oil or gas wells, either dry or producing, in this Commonwealth, or to remove casings therefrom, whether same be either oil or gas, either producing or dry, or for any cause abandon said well or wells without first plugging the same in a secure manner by placing a plug of pine, poplar or some other material which will prevent said well from becoming flooded, said plug to be placed above the oil-producing sand or sands, and filled in above for the distance of seven feet with sediment or clay and placing upon the same another plug of similar material as that of the first and also placing about ten feet below the said casing another plug of like material as above referred to, seven feet of sediment or clay, and then another plug, all plugs to be securely driven in so that no water can pass the same, before the casing is removed. Sec. 1, Acts 1906, p. 281.

Penalty.

Any person or persons, corporations or companies refusing or failing to comply with the foregoing provisions as provided for in section 1 herein, shall, on conviction, be fined in any sum not less than one hundred dollars, or not more than one thousand dollars, in the discretion of the jury. Act March 17, 1906, Ky. St. § 3914 A.

Salt Water Must Not Escape.

That from and after the passage of this Act, any person or corporation, and each and every of them, in possession, whether as owner, lessee, agent or manager of any well in which petroleum, natural gas or salt water has been found, shall, unless said product is sooner utilized, within a reasonable time, not, however, exceeding three months from the completion of said well, in order to prevent said product wasting by escape, shut in and confine the same in said well until such time as it shall be utilized: *Provided, however,* That this section shall not

apply to gas escaping from any well while it is being operated as an oil well, or while it is used for fresh or mineral water. Act May 14, 1892, Ky. St. § 3910.

Plugging Section of 1892.

That whenever any well shall have been shut down for the purpose of drilling or exploring for oil, gas or salt water, upon abandoning or ceasing to operate the same, the person or corporation in possession as aforesaid shall, for the purpose of excluding all fresh water from the gas-bearing rock, and before drawing the casing, fill up the well with sand or rock sediment to a depth of at least twenty feet above the rock which holds the oil, gas or salt water, and drive a round, seasoned wooden plug, at least three feet in length, equal in diameter to the diameter of the well below the casing, to a point at least five feet below the bottom of the casing; and immediately after drawing the casing, shall drive a round, seasoned wooden plug, at a point just below where the lower end of the casing rests, which plug shall be at least three feet in length, tapering in form, and of the same diameter, at the distance of eighteen inches from the smaller end, as the diameter of the hole below the point at which it is to be driven. After the plug has been properly driven, there shall be filled on top of the same sand or rock sediment to the depth of at least five feet. *Id.*, § 3911. Doubtless killed by § 3914 A.

Penalty for Violation of Section 3910 or 3911.

Any person or corporation who shall violate any of the provisions of sections 3910 or 3911 shall be liable to a penalty of one hundred dollars for each and every violation thereof, and to the further penalty of one hundred dollars for each thirty days during which said violation shall continue; and all such penalties shall be recovered, with cost of suit, in a civil action or actions, in the name of the State, for the use of the county in which the well shall be located. *Id.*, § 3912.

Adjoining Owners May Close Abandoned Well.

Whenever any person or corporation in possession of any well in which oil, gas or salt water has been found, shall fail to comply with the provisions of section 3910, any person or corporation lawfully in possession of lands situate adjacent to or in the neighborhood of said well, may enter upon the lands upon which said well is situated, and take possession of said well from which oil, gas or salt water is allowed to escape or waste in violation of said section 3910, and tube and pack said well, and shut in said oil, gas or salt water, and may maintain a civil action in any Court of this State against the owner, lessee, agent or manager of said well, and each and every of them, jointly and severally, to recover the cost thereof. This shall be in addition to the penalties provided by the [the next above] section 3912. *Id.*, § 3913.

Recovery of Costs by Adjoining Owner.

Whenever any person or corporation shall abandon any well, and shall fail to comply with section 3911, any person or corporation lawfully in possession of lands adjacent to or in the neighborhood of said well, may enter upon the land upon which said well is situated, and take possession of said well, and plug the same in manner provided by section 3911, and may maintain a civil action in any Court of this State against the owner or person abandoning said well, and every one of them, jointly and severally, to recover the cost thereof. This shall be in addition to the penalties provided by section 3912: *Provided*, This section shall not apply to persons owning the lands on which said well or wells are situated, and drilled by other parties; and in case the person or corporation drilling said well or wells is insolvent, then, in that event, any person or corporation in possession of lands adjacent to or in the neighborhood of said well or wells, may enter upon the land upon which said well or wells are situated, and take possession of said well or wells, and plug the same in the manner provided for in section 3911, at their own expense. *Id.*, § 3914.

STATE OIL TAX ACT**Production Tax on Oil.**

SEC. 1. Every person, firm, corporation or association producing crude petroleum oil in this State, shall, in lieu of all other taxes on the wells producing said crude petroleum, annually pay a tax equal to 1 per centum of the market value of all crude petroleum so produced, and such tax shall be for State purposes, and, in addition any county in the State may impose a like tax for road purposes, county purposes or school purposes, not to exceed one-half of one per centum of the market value of all crude petroleum produced in such county, and the fiscal Court of any county may levy said tax for county purposes and shall determine what fund or funds shall receive the taxes when collected, and, when crude petroleum is produced in any separate taxing district in a county, the fiscal Court shall equitably distribute such taxes between the county and such taxing district.

Levy and Notice of Levy.

SEC. 2. Any county imposing the tax provided in section 1 hereof shall immediately, after the levy of such tax, give notice thereof to each transporter of crude petroleum registered in said county, and the transporter of said crude petroleum shall, from and after the first day of the month immediately following such notice, proceed as hereinafter provided, to collect such county tax, and shall pay the same to the sheriff of such county in the manner and at the time payment of such taxes shall be required to be made to the State Tax Commissioner. Each county imposing such tax shall also, upon the fixing of the levy, certify the same to the State Tax Commission, which shall make the assessment for such county tax, in the same manner and at the same value as provided for the State tax, which shall be certified to such county for collection.

When Tax Attaches.

SEC. 3. The tax hereby provided for shall be imposed and

attach when the crude petroleum is first transported from the tanks or other receptacles located at the place of production.

Registry.

Sec. 4. Every person, firm, corporation or association required to report under section 5 of this Act, shall register as a transporter of crude petroleum in the clerk's office in each county of this State, in which such business is carried on by such transporter of crude petroleum, in a book which the State Tax Commission shall provide therefor, showing the name, residence and place of business of such transporter of crude petroleum, and it shall be the duty of the county clerk of each county to immediately certify to the State Tax Commission a copy of each registration as made.

Transporter Defined. Monthly Reports.

SEC. 5. Every person, firm, corporation or association engaged in the transportation of crude petroleum in the State from the tanks or other receptacles located at the place of production in the State, shall, for the purposes of this Act, be considered a transporter of crude petroleum, and every such transporter of crude petroleum shall make a monthly, verified report to the State Tax Commission, on or before the 20th day of the month succeeding the month in which the crude petroleum is so received for transportation, showing the quantity of each kind or quality of all crude petroleum so received from each county in the State and the market value of such crude petroleum on the first business day after the tenth day of the month in which such report is made and such report shall show any sales of such crude petroleum so received, in which event it shall show the quantity of crude petroleum in each sale, the date of each sale, and the market price of such crude petroleum on each date of sale for such preceding month, and said report shall be made upon blanks furnished and prescribed by the State Tax Commission.

Assessment Procedure.

SEC. 6. The State Tax Commission shall, upon receivingg the reports provided for in section 5 hereof, upon such reports and such other reports and information as it may secure, assess the value of all grades or kinds of crude petroleum so reported for each month, and, on or before the last day of the month in which such reports are required to be made, notify each transporter of crude petroleum so reporting of such assessment, and certify such assessment to the county clerk of each county which has reported the levy of the county tax provided for in section 2, for record, and such county clerk shall immediately deliver a copy thereof to the sheriff of such county for the collection of such county tax. The transporter so notified of the assessment shall have until the twentieth day of the month following such notice, in which to be heard by the State Tax Commission on any objection to such assessment, and the assessment shall become final on such twentieth day of the month and the tax be due and payable on that day. The State Tax Commission shall make the assessment of the value of the crude petroleum so reported by each transporter of crude petroleum as follows:

Oil Unsold.

Where the report shows no sale of crude petroleum during the month covered by such report, then the market value of crude petroleum on the first business day after the tenth day of the month in which the report is made shall be fixed as the assessed value of all crude petroleum covered by such report.

But where the report shows sales of crude petroleum during the month covered by such report, if it shows that all crude petroleum so reported has been sold, then the market price of such crude petroleum on each day of such sale or sales shall be the assessed value of all crude petroleum sold on such date of sale and the total amount of the tax to be reported as the assessment on such report shall be the total of the assessment or assessments made on such sale or sales; but if such report shows that any part of the crude petroleum so reported remains unsold, then as to such portion remaining unsold the market price of the crude

petroleum on the first business day after said tenth day of the month following the month covered by such report, shall be fixed as the assessed value of such portion of the crude petroleum unsold, and the total amount of the tax to be reported as the assessment on such report shall be the total of the assessments made on such sold and unsold crude petroleum.

Deduct Freight.

The State Tax Commission in making its assessments shall take into consideration transportation charges.

Payment in Kind.

SEC. 7. Every person, firm, corporation or association required to make report as provided in section 5 hereof, shall be responsible and liable for the taxes as herein set forth on all crude petroleum so received by it, and shall collect from the producer in either money or crude petroleum the taxes imposed under the provisions of this Act; but, if collection is in crude petroleum, such transporter is authorized and empowered to sell the same, and pay said taxes by check or cash to the State Tax Commission or sheriff, as provided in this Act.

Report Blanks.

Sec. 8. The State Tax Commission may require reports on blanks prepared by it from all producers and transporters of crude petroleum, in addition to the reports above provided for, as it may deem necessary from time to time.

Penalty for Failure to Report or Pay.

SEC. 9. Any person, firm, corporation or association, required to make reports or collect and pay the taxes hereunder, failing to pay such taxes, penalty or interest, after becoming delinquent or failing to make any report, required by this Act, for thirty days after the date upon which the same is required by this Act to be made; or failing for thirty days after engaging in the transportation of crude petroleum, as set out herein, to register

as required hereby, shall be deemed guilty of a misdemeanor, and on conviction shall be fined fifty dollars (\$50.00) for each day of such failure, to be recovered by indictment or civil action, and a false report shall be deemed as a failure to report under this Act. Approved March 29, 1918 Laws, p. 540.

ACT REGULATING COMMON CARRIERS

An Act regulating the transportation, delivery, and nonliability of common carriers by pipe line of crude petroleum or gas.

Limiting Liability of Oil and Gas Carriers.

SEC. 1. That all persons, firms, corporations, and associations engaged in the business of transporting crude petroleum or gas by pipe line as a common carrier, may accept for transportation such oil or gas as is offered to it for that purpose from the party or parties in possession, and shall redeliver the same upon the order of the consignor unless prevented by an order of some court of competent jurisdiction, and such delivery shall be made without liability on the part of such carrier to the true owner out of possession except from the time such order of court is served upon it in the same manner that summons is now required to be in civil actions.

SEC. 2. It appearing that a great demand for this legislation now exists for the protection of the oil industry, of the State, an emergency is hereby declared to exist, and this act shall become effective upon its passage and approval. Approved March 18, 1920, Acts of 1920, p. 109.

ACT CONCERNING CONTRACTS AND LEASES

An Act to standardize, validate, define and enforce contracts and leases for lands leased for oil and gas purposes and to provide for how and when offset wells shall be drilled.

Tender of Delay Rentals.

SEC. 1. Whenever, in any lease of lands for oil and gas pur-

poses, it is provided in substance that actual drilling or development may be postponed by the payment or tender of rentals on or before the date fixed in said lease for such payment or tender, if the lessee or assignee of said lessee shall fail to pay or tender said rents on or before the date stipulated in the lease, or contract to pay, then said lease or contract shall be void, unless the lessor thereafter, and before executing a new lease or contract, shall accept said rentals.

SEC. 2. That all valid, existing or future contracts and leases for oil and gas rights upon and under the lands of this Commonwealth, wherein by their terms a rental clause is provided in event of failure to drill for oil or gas within a given period, are hereby validated and declared to be, and shall be, construed by the courts of this Commonwealth enforceable and binding contracts according to the terms thereof between the parties so long as the rentals therein provided shall be paid or tendered at and as provided by their terms during the period of said lease and contract.

Dry Well. Second Well.

SEC. 3. That the drilling of one nonproductive well shall be sufficient consideration for the discharge of rentals for holders of said contract and lease for a period of twelve months after its completion, and at the expiration of which time another well shall be commenced or rentals renewed as per said lease or contract, and if lessor fails to commence a well or renew payments of rentals said lease shall automatically expire and become null and void.

Protection Wells.

SEC. 4. That in the event of oil or gas being discovered in paying quantities on an adjoining leasehold and the products therefrom being taken out of the ground and marketed and said well is within two hundred feet of another lessor's property line, then within three months after written notice has been given lessee to the effect that such oil or gas has commenced to be transported off and marketed from the said ad-

joining premises the lessee or lessees of the land lying within two hundred feet of the said wells shall begin to drill an offset well to each of such wells so located, provided said offset wells to be drilled are not less than five hundred feet of each other, and upon his failure to so commence said offset well and complete same with diligence the said contract and lease shall automatically expire and become null and void. Provided this shall not apply to leases that are being operated, or on which wells are being drilled.

Sections 5 and 6 are the repeal and emergency clauses. Approved March 18, 1920, Acts of 1920, p. 110.

ACT REGULATING TRANSPORTATION IN PIPE LINES

An Act relating to oil and natural gas; regulating the receipt of same into pipe lines, and the transportation and delivery thereof to consumers.

Pipe Line Shipments, a Public Use.

SEC. 1. Every company or corporation receiving, transporting or delivering a supply of oil or natural gas for public consumption is hereby declared to be a common carrier, and the receipt, transportation and delivery of natural gas into, through and from a pipe line operated by any such company is declared to be a public use.

Duty to accept Shipments.

SEC. 2. It shall be the duty of each and every company engaged in the receipt, transportation or delivery of oil or natural gas for public consumption at all reasonable times to receive, for transportation and delivery, from such pipes as may be connected up with any main or tributary line, all gas that may be held and stored or ready for delivery, provided, however, that said main or tributary line has the means or capacity to so receive, transport or deliver such oil or gas as is offered.

Proportionate Deliveries.

SEC. 3. In the event that any main line or tributary thereto or both, is operating and transporting to such capacity as that it is impossible or impracticable to receive or transport all offered oil or gas, where connections exist, then it shall be the duty of the operating company to receive and transport offered oil or gas in equal proportions, using the daily productive quantity of each producing person or company so offering gas as the basis of proportion.

Penalty and Damages.

SEC. 4. Any wilful refusal or failure to receive, transport and deliver oil or gas in the manner set out above, shall be deemed a misdemeanor, and upon conviction, the company so failing or refusing shall be fined not less than one hundred nor more than five hundred dollars, and each day's willful failure or refusal shall be deemed to be a separate offense, and in addition said failing or refusing company shall be liable in damages to the injured party.

SEC. 5. This law to become effective upon its passage and approval, and in due course of law. Neither approved nor disapproved by the Governor. Acts of 1920 p. 613.

Powers of Railroad Commission Extended.

An Act approved March 22, 1920, Acts page 250 extends the power of the railroad commission over natural gas companies and natural gas transportation companies.

LOUISIANA.

(ACT OF 1910)

Department of Mining and Minerals Established.

SEC. 1. *Be it enacted by the General Assembly of the State of Louisiana*, That there be and is hereby established a De-

partment of Mining and Minerals, including gas and oil, to consist of the register of the State Land Office, who shall be ex-officio supervisor of minerals, and one deputy supervisor of minerals, who shall be a person having a practical knowledge of geology, and natural gas, and oil, and who shall be appointed and commissioned by the governor, on the recommendation of the conservation Commission, for the period of one year at a time; provided the ex-officio supervisor of minerals shall receive as compensation for the performance of his duty imposed on him by this Act, five hundred dollars per annum (\$500.00), and the deputy supervisor and such assistants as may be provided to be compensated as hereinafter provided, all to be paid from the conservation fund, the supervisor on his own warrant, Act July 7, 1910, p. 423.

(The general provisions of this section have been superseded by Act 127 of 1912, placing all mineral resources under the Department of Conservation.)

Duty of Supervisor to Enforce Laws and Make Reports.

SEC. 2. That the supervisor of minerals shall make inspection, either in person or through the deputy supervisor, of all mining operations carried on in this State, particularly that of the production of natural gas and oil, so far as practicable, and shall see that every precaution is taken to insure the health and safety of workmen engaged in mining. He shall see that all the provisions of law pertaining to mining now in force, or hereafter enacted, particularly those provisions pertaining to the drilling of wells and piping and consumption of natural gas and oil, are faithfully carried out, and that the penalties of law are strictly enforced against any person or persons who violates the same.

He shall make an annual report to the conservation Commission on the first Monday in April of each year, tabulating the number and character of mining operations being carried on in this State, with location and annual production, both in quantity and value; a record of the geological strata passed through in drilling gas and oil wells; the depth at which salt

water is reached in the various wells and the height to which it rises so far as practicable.

He shall report the volume of gas and oil produced by each well, and also the initial or rock pressure of the same; the increase or decrease in pressure of the various wells so far as it can be ascertained, and also the increase or decrease in value of gas produced in gas wells; the number of miles of mains laid for the transportation of gas and oil and capacity and course of the same; the amount of capital invested in the oil, gas and other mining industries; and the number of persons employed in the same; the amount of capital invested in manufactures located on account of natural gas and oil and other minerals, and the number of employees, and other facts or information as the conservation Commission may require. *Id.*

Deputy Supervisor.

SEC. 3. That there shall be appointed by the governor, upon the recommendation of the conservation Commission, a person having a practical knowledge of geology and natural gas and oil, and who is not directly or indirectly interested in mining or in piping or selling natural gas and oil, as deputy supervisor of minerals of the State of Louisiana.

His duty shall be as herein prescribed for the supervisor of minerals, and he shall be the chief assistant under the supervision of the supervisor of minerals, in carrying out the mining policy of the State. Within ten (10) days after he shall have been commissioned he shall make and execute a bond in the sum of twenty-five hundred dollars (\$2,500.00), payable to the governor of Louisiana, which bond shall be for the faithful performance of duty and shall be approved and filed with the Secretary of State. Such deputy supervisor shall devote all his time to the business of supervision of mining.

He shall receive a salary of two thousand dollars (\$2,000.00) per annum, and under the supervision of the supervisor of minerals shall have an allowance not exceeding one thousand dollars (\$1,000.00) per year for office and traveling expenses for himself and such assistants as may be hereinafter provided,

which sum shall be paid from the conservation fund upon his warrant, countersigned by the supervisor of mining. *Id.*

Inquisitorial Powers of Deputy Supervisor.

SEC. 4. That it shall be the duty of the deputy supervisor of minerals to inspect all mining operations carried on in the State, and he shall have the power to prohibit any such operations as he may deem unsafe or dangerous to life or property or wasteful of natural resources; reserving a right of appeal by the operator, or operators, or owners, to the conservation Commission for ten (10) days if notified by such operator or operators, or owner, to the supervisor at the time they shall receive notice to cease operation.

And any person or persons carrying on any such operations prohibited shall be guilty of a misdemeanor and upon conviction shall pay a fine in any Court having jurisdiction of such misdemeanor in a sum of not exceeding one thousand dollars (\$1,000.00), or shall be imprisoned in the parish jail a period not exceeding six months at the discretion of the Court; and any person or persons in this State owning mines or carrying on mining operations, or who contracts the same, who refuses to allow the same to be inspected by the supervisor of minerals, upon conviction shall be fined in a sum not exceeding five hundred dollars (\$500.00); *Provided, further,* That whenever any responsible person shall file with the supervisor of minerals an affidavit charging the owner or owners, or operators of such mines, or gas and oil wells, or their employees with the violation of any of the laws regulating mining, or the production of natural oil and gas, and particularly specifying the violation complained of, it shall be the duty of the supervisor to examine and inquire into the alleged violation of the law, as set forth in the affidavit, and if he finds the facts as charged it shall be his duty to see that the law is complied with.

He shall have, and is hereby invested with authority to inquire if all person or persons engaged in mining operations subject to a license tax have procured license and when he shall find any operating without license he shall report the same to the super-

visor of minerals, who shall proceed according to law to enforce the license tax collections. *Id.*

(ACT OF 1911)

Abandoned Wells Must Be Plugged; Provisions for Shot Wells.

1. *Be in enacted by the General Assembly of the State of Louisiana*, That whenever any well shall have been sunk for the purpose of obtaining natural gas or oil or exploring for the same, and shall be abandoned or cease to be operated for utilizing the flow of gas or oil therefrom, it shall be the duty of any person, firm or corporation having the custody or control of such well at the time of such abandonment or cessation of use, and also of the owner or owners of the land wherein such well is situated, to properly and securely stop and plug the same as follows: If such well has not been "shot" there shall be placed in the bottom of the hole thereof a plug of well-seasoned pine wood, the diameter of which shall be within one-half inch as great as the hole of such well, to extend at least three feet above the salt water level, where salt water has been struck such plug shall extend at least three feet from the bottom of the well. In both cases such wooden plugs shall be thoroughly rammed down and made tight by the use of drilling plugs. After such ramming and tightening the hole of such well shall be filled on top of such plug with finely broken stone or sand, which shall be well rammed to a point at least four feet above the gas or oil-bearing rock; on top of the stone or sand there shall be placed another wooden plug at least five feet long with diameter aforesaid, which shall be thoroughly rammed and tightened. In case such well has been "shot" the bottom of the hole thereof shall be filled with a proper and sufficient mixture of sand, stone and dry cement, so as to form a concrete up to a point at least eight feet above the top of the gas or oil-bearing rock or rocks, and on top of this filling shall be placed a wooden plug at least six feet long, with diameter as aforesaid, which shall be properly rammed as aforesaid. The casing from the well shall then be pulled or withdrawn therefrom, and immediately thereafter

a cast-iron ball, eight inches in diameter, shall be dropped in the well, and securely rammed into the shale by the driller or owner of the well, after which not less than one cubic yard of sand pumping or drilling taken from the well shall be put on top of said iron ball. Act 1911, p. 313.

Escape of Gas or Oil to Be Stopped in Two Days.

2. That it shall be unlawful for any person, firm or corporation having possession or control of any natural gas or oil well, whether as a contractor, owner, lessee, agent or manager, to allow or permit the flow of gas or oil from any such well, to escape into the open air, without being confined within such well or proper pipes, or other safe receptacle, for a period longer than two (2) days, next after gas or oil shall have been struck in such well, and thereafter all such gas or oil shall be safely and securely confined in such wells, pipes or other safe and proper receptacles; *Provided*, That this law shall not apply to any well that is being operated for the production of oil and in which the oil produced has a higher salable value in the field than has the gas so lost. *Id.*

Supervisor of Minerals Authorized to Prescribe Regulations.

3. That the supervisor of minerals shall have, and he is hereby invested with, authority to prescribe regulations for the boring of oil and gas wells, to the end that blow-outs, and gas waste, shall be avoided, which regulations shall be followed by drillers. *Id.*

Penalty. Misdemeanor.

4. That any person, firm or corporation, violating the provisions of sections 1 and 2 of this Act or any reasonable regulations provided by the supervisor of minerals, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars (\$500.00), or shall be imprisoned for a period not exceeding three months, in the discretion of the Court. *Id.*

Adjacent Owners May Close, Pack and Tube.

5. That whenever any person, or corporation in possession or control of any well in which natural gas or oil has been found shall fail to comply with the provisions of this Act, any person or corporation lawfully in possession of lands situated adjacent to or in the vicinity or neighborhood of such well may enter upon the lands upon which such well is situated and take possession of such well from which gas or oil is allowed to escape in violation of the provisions of sections 1 and 2 of this Act, and pack and tube such well and shut in and secure the flow of gas or oil, and maintain a civil action in any Court of competent jurisdiction in this State against the owner, lessee, agent or manager of said well, and each of them jointly and severally, to recover the cost and expenses of such tubing and packing, together with attorney's fees and costs of suit. This shall be in addition to the penalties provided by section 4 of this Act. *Id.*

(ACT No. 283 OF 1910)

Wild Gas Well, How Closed.

Section 1. *Be it enacted by the General Assembly of the State of Louisiana*, That in order to protect the natural gas fields of this State, it is hereby declared to be unlawful and a nuisance for any person, firm or corporation to negligently permit or suffer any natural gas well to go wild or become uncontrollable or wastefully burn and the owner or proprietor or person in possession of any wild, uncontrollable or wastefully burning natural gas well, shall close the same and securely cap it or plug it or otherwise prevent the escape and waste or wasteful burning of natural gas therefrom, after five (5) days' written notice to such owner or proprietor or person in possession to do so; such notice to be given by any person having an interest in stopping such wild, uncontrollable, wasteful or wastefully burning natural gas well; or such notice may be given by any constable or justice of the peace of the parish where such wild or uncontrollable or wasteful or wastefully burning natural gas well may be located, or the demand of any person having an interest in the stopping of the same. Act No. 283 of 1910.

Governor to Confiscate Wild Well.

Sec. 2. That whenever such owner or proprietor or person in possession of such wild, or uncontrollable, wasteful or wastefully burning natural gas well, shall be notified to close, cap or plug the same, or otherwise prevent the escape and waste or wasteful burning of natural gas therefrom, he shall in good faith commence the work of so closing or capping or plugging the same in order to prevent the escape and waste or wasteful burning of natural gas therefrom, within five (5) days from the date of the receipt of such notice as provided for in the first section of this Act; and in the event that the owner or proprietor or person in possession of such natural gas well fails, refuses or neglects to close, plug or cap the same or otherwise prevent the escape and waste or wasteful burning of natural gas or commence in good faith the work of doing so within five (5) days from the receipt of such notice, the Governor, on the written complaint of any person, firm or corporation having an interest in the stopping, plugging or closing of such natural gas well, shall direct the Board of State Engineers to take charge of the work of closing such wild or uncontrollable or wastefully burning natural gas well, and the Board of State Engineers shall then proceed at once to cap or close or plug the same or otherwise prevent the wasteful escape or wasteful burning of natural gas from such well, at the expense of the owner or proprietor thereof; and to secure to the State the cost and expense of such closing, capping or plugging of such well, possession of the same, with sufficient ground adjacent thereto, it belonging to such owner or proprietor, with the rents, revenues and incomes therefrom, shall be retained by the State until the full and final payment of such costs and expense shall be reimbursed to the State, and when such owner or proprietor or person in possession of such well shall pay such cost or expense to the State, less the revenues, rents and incomes derived therefrom by the State while the same was in possession of the State, the State shall restore possession of said well to him provided, in the event that the rents, revenues, and incomes shall not be sufficient to reimburse the State as provided for in this section, then and in that

such wild, uncontrollable or wasteful natural gas well, shall operate as a lien and privilege upon all of the property of whatsoever nature of the owner of the said wild well, and the State shall proceed to enforce said lien and privilege by suit before any Court of competent jurisdiction, the same as in other like civil actions, and the judgment so obtained shall be executed in the same manner as now provided by law. If the property so seized and sold brings an amount in excess of the cost and expense occasioned by the State as provided in this section; then and in that event such excess or balance shall be paid over to the owner of such wild gas well. *Id.*

Misdemeanor to Allow Well to Go Wild.

Sec. 3. That it shall be a misdemeanor for any person to wilfully and intentionally set fire to any natural gas well or negligently permit or suffer any natural gas well owned by him or under his management and control or in his possession, to catch on fire or go wild or become uncontrollable, or to negligently permit or suffer natural gas to wastefully escape or wastefully burn therefrom; and on conviction thereof shall be fined in a sum not less than five hundred dollars (\$500.00) or imprisonment of not less than three (3) months or both, at the discretion of the Court. *Id.*

Misdemeanor to Injure Pipe Line.

Sec. 4. That any person who shall intentionally or wilfully injure or damage the property, pipes, pipe lines or mains of any natural gas well belonging to or operated by any natural gas-producing company, or who shall wilfully or intentionally divert the gas from any pipe, main or natural gas well, the property of any such natural gas-producing company, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in the sum of not less than one hundred dollars (\$100.00) or imprisonment of not less than thirty (30) days or both, at the discretion of the Court. *Id.*

Misdemeanor to Fail to Plug.

Sec. 5. That it shall be unlawful for any individual, firm or corporation to abandon any well in or adjacent to a natural gas field or an apparent natural gas field, without first placing a wooden plug, properly made, both above and below the gas-producing sand, to prevent the admission of water into the gas-producing sand or otherwise sufficiently securing such well against the admission of water into the gas-producing sand; and whenever any individual, firm or corporation shall abandon such well without first plugging or securing the same as provided, to prevent the admission of water into the gas-producing sand, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) or imprisonment of not less than thirty (30) days nor more than four (4) months, or both, at the discretion of the Court. *Id.*

Act Applies to All Gas Wells.

Sec. 6. That the provisions of this Act shall apply to any gas well or wells which may be bored or drilled in, near to or adjacent to any natural gas field or to any apparent natural gas field and to any such well or wells which have heretofore already been bored or drilled. *Id.*

(ACT NO. 145 OF 1916)

License Tax on Operators.

Sec. 1. *Be it enacted by the General Assembly of the State of Louisiana*, That there is hereby levied a license tax for the year 1916, and for each subsequent year, upon each person or association of groups, firms or corporations pursuing the business of severing natural products, including all forms of timber, turpentine and minerals, including oil, gas, sulphur and salt; from the soil; to be collected quarterly by the Tax Collectors as hereinafter set forth, the license for each quarter to

be based on the amount severed in the preceding quarter. Act 1916, No. 145.

Quarterly Statements Required.

Sec. 2. *Be it further enacted, etc.,* That every such person, firm, association or corporation engaged within the State in the business of severing timber, turpentine, oil, gas, sulphur and salt, from the soil, shall, within thirty days after the expiration of each quarter annual period expiring respectively on the last day of September, December, March and June of each year, file with the State auditor a statement under oath, on forms prescribed by him, of the business conducted by such person, firm, association or corporation during the last preceding quarter annual period, showing the nature of the natural products so produced, and the gross amount thereof, the actual cash value thereof, and any such information pertaining thereto as the State Auditor may require, and in the case of a mine or gas or oil well, including sulphur and salt, showing the location of each saw mill, timber camp or turpentine camp, or of each mine or farm, tract or lot of land upon which the wells that are actually producing oil, sulphur, salt or other minerals are located; also giving the number of actually producing gas wells on each farm, tract or lot from which said person, firm, association or corporation is selling gas, either for domestic use, manufacturing purposes or making a business of selling it for any purposes whatever. At the time of rendering the said report the said person, firm, association or corporation shall at the same time pay to the Tax Collector of the parish where said product is taken or severed from the soil, a little license to operate in each succeeding quarter, fixed upon the amount of production of the preceding quarter, as follows:

Two and one-half cents ($2\frac{1}{2}$) per one thousand (1,000) feet for severing oak and ash timber; four (4) cents per one thousand feet for severing cypress timber; two (2) cents per one thousand (1,000) feet for severing all other kinds of timber; three-fourths ($\frac{3}{4}$) of one (1) cent per barrel for severing oil; ten (10) cents per ton for severing sulphur; two (2) cents per ton for severing salt; and one (1) cent per barrel for severing

turpentine; one fifth ($\frac{1}{5}$) of one (1) mill per one thousand (1,000) cubic feet for severing gas.

The making of said reports and the payment of said licenses shall be by those actually engaged in the operation of severing, whether it be the owner of the soil, or a lessee who is severing from the soil of another, or the owner of any such resources severing from the soil of another. In all cases where any timber is purchased after the same has been severed from the soil, the purchaser thereof shall make report of the amount and the name of the owner from whom purchased, to the tax collector, in order that the tax collector may collect the license from the seller of the timber. Such seller of the timber, after it is severed from the soil, shall also make report to the Tax Collector and the auditor, and pay the license as herein provided. *Id.*

State Auditor May Demand Information.

Sec. 3. That the State auditor shall have the power to require any such person, firm, association or corporation engaged in severing all such natural products from the soil to furnish any additional information deemed by him to be necessary for the purpose of computing the amount of said tax and for said purpose to examine the books, records and files of such person, firm, association or corporation; and to that end shall have power to examine witnesses, and if any such witnesses shall fail or refuse to appear at the request of the State auditor, said auditor shall certify the facts and the name of the witness so failing and refusing to appear to the district Court of the State having jurisdiction of the party, and said Courts shall thereupon issue a summons to the said party to appear and give such evidence as may be required, for the purpose of ascertaining whether or not any return so made is the true and correct return of the gross receipts of any such person, firm, association or corporation, and whenever it shall appear to the State auditor that any such person, firm, association or corporation engaged in severing such natural products from the soil has unlawfully made an untrue or incorrect return of its gross receipts, as made hereinbefore provided, he shall ascertain the correct amount of such gross receipts and shall compute said tax on same. *Id.*

Date of Delinquency. Additional Taxes May Be Levied.

Sec. 4. That the tax provided for by this Act shall become delinquent after the date fixed for each quarter-annual report to be filed in the office of the State auditor and from such time shall, as a penalty for such delinquency, be subject to similar penalties to those provided in the general license laws of this State; and the payment of the license tax exacted by this Act shall be in addition to and shall not affect the liability of the parties so taxed for the payment of all State, municipal, district, parochial and special taxes upon their real estate and other corporeal property; but no other tax in addition hereto shall be imposed upon rights to produce in this State those things whose production is subjected to a license tax by the provisions of this Act; except that where the police juries of the several parishes of the State are authorized by existing laws to levy a tax upon the business of severing any of the natural products affected by this Act that such police juries may continue to levy such license tax provided that same shall in no case exceed one-half of the amount levied herein for the State. *Id.*

State Auditor to Make Inquisition.

Sec. 5. That if any person, firm, association or corporation shall fail to make a report of the gross production of its natural products, upon which the license is herein provided for, within the time prescribed by law for such report, it shall be the duty of the State auditor to examine the books, records and files of any such person, firm, association or corporation to ascertain the amount and value of such production and to compute the tax thereon as provided herein, and shall add thereto the cost of such examination, together with any penalties accruing therefrom, and to this end he may call upon the supervisor of public accounts to assist in such investigation. *Id.*

Sheriff to Collect.

Sec. 6. That when any tax provided for in this Act shall become delinquent, the State auditor shall issue an order directed

to the sheriff of any parish wherein the same, or any part thereof, accrued, and the sheriff to whom said order shall be directed shall proceed against the property, assets and effects of the person, firm, association or corporation against whom said tax is assessed in the same manner as he is authorized by the general license law to proceed in the collection of delinquent licenses; collecting penalties as prescribed in general laws. *Id.*

Perjury to Make False Report.

Sec. 7. *Be it further enacted, etc.,* That any person who shall intentionally make any false oath to any report required by the provisions of this Act shall be deemed guilty of perjury and shall be subject to all penalties prescribed for said crime. *Id.*

Sections 8-11 refer to use of the funds collected and other matters of indifference to oil operators.

(ACT OF 1917)

Proof of Forfeit of Lease to Be Recorded.

Section 1. When an oil, gas or other mineral lease heretofore or hereafter executed shall become forfeited, it shall be the duty of the lessee, his successor or assigns, within sixty days from the date this Act shall take effect, if the forfeiture occurred prior thereto and within sixty days from the date of the forfeiture of any and all leases to have such lease released from record in the county where the land is situated without cost to the owner thereof. Act 1917, p. 24.

Damages for Failure to Release.

Sec. 2. Should the owner of such lease neglect or refuse to execute a release as provided in this Act, then the owner of the leased premises may sue in any Court of competent jurisdiction to obtain such release, and he may also recover in such action of the lessee, his successor or assigns the sum of one hundred dollars damages and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and he may

also recover any additional damages that the evidence in the case will warrant. In all such actions writ of attachment may issue as in other cases. *Id.*

Written Demand to Release.

Sec. 3. At least twenty days before bringing the action provided for in this Act, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease (if such demand by ordinary diligence can be made in this State) that said lease be released of record. Such demand must be written. When written a letterpress or carbon or written copy thereof, when shown to be such, may be used as evidence in any Court, with the same force and effect as the original. *Id.*

Well to Be Cased against Salt Water.

Section 1. That the owner or operator of any well put down for the purpose of exploring for and producing oil or gas shall, before drilling into the oil or gas-bearing rock, encase the well with good and sufficient wrought iron oil well casing from the lower part of such well, and from penetrating the oil or gas bearing rock. Should any well be put down through the first into a lower oil or gas-bearing rock, the same shall be cased in such manner as will exclude all salt water from both upper and lower oil or gas-bearing rocks penetrated. Act 1917, p. 46.

Abandoned Wells to Be Plugged.

Sec. 2. The owner of any well, when about to abandon or cease operating the same; for the purpose of excluding all fresh or salt waters from penetrating the oil or gas bearing rock or rocks, and before drawing the casing, shall fill the well with sand or rock sediment to the depth of two feet below the top of each oil or gas bearing rock, and drive therein a round, seasoned, wooden plug two feet in length, and in diameter equal to the full diameter of the well below the casing and immediately upon drawing the casing, shall fill in on top of such plug with sand or rock sediment to a depth of five feet, and again

drive into the well a round, wooden plug three feet in length, the lower end tapering to a point, and to be of the same diameter at the distance of eighteen inches from the smaller end as the diameter of the well below the point at which it is driven; and after such piling has been driven, the well shall be filled with sand or rock sediment to the depth of twenty feet. *Id.*

Penalty.

Sec. 3. Any owner or operator or person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and shall be fined in the sum of not less than one hundred dollars nor more than five hundred dollars for each and every offense, and for a second violation of any of the provisions of the preceding sections of this Act, shall be fined in a sum of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than six months, or both such fine and imprisonment. *Id.*

ACT DEFINING WASTE OF NATURAL GAS

(ACT 268 OF 1918)

Section 1. Be it enacted by the General Assembly of the State of Louisiana. That it shall be unlawful to permit the waste of natural gas, or to use natural gas for any purpose whatsoever in such manner as will threaten with premature exhaustion, extinction or destruction the common supply or common reservoir from which said natural gas is drawn.

Definitions of Waste.

Sec. 2. That the term waste as above used in addition to its ordinary meaning, shall include:

(a) Wantonly or wilfully permitting the escape of natural gas in commercial quantities into the open air.

(b) The intentional drowning with water of a gas stratum capable of producing gas in commercial quantities.

(c) Underground waste.

(d) Permitting of any natural gas well to wastefully burn.

Power and Authority of Department.

Sec. 3. That the Department of Conservation is granted full power and authority to prevent the waste of natural gas, or the use of natural gas for any purpose whatsoever in such quantities as will threaten with premature exhaustion, extinction or destruction the common supply or common reservoir from which said natural gas is drawn by preventing the flow during each 24 hours from any well of more than twenty-five per cent of the potential capacity thereof, and it is made the imperative duty of the said Department of Conservation to make frequent inspection and investigation of the natural gas fields of the State so as to carry out the provisions of this Act, and if any waste or use of natural gas in quantities to threaten with premature exhaustion, extinction or destruction the common reservoir from which the natural gas is being drawn is found to exist as waste and the undue use of natural gas has heretofore been defined, the said Department shall proceed at once to prevent or stop the waste or improper use of such natural gas; and to carry out the provisions of this Act and existing laws the Department of Conservation is empowered to sue out an injunction without giving bond in any of the District Courts of the State to prevent and prohibit the said waste of natural gas or the use or manner of use of natural gas in such quantities as to threaten with premature exhaustion, extinction or destruction the common source or reservoir from which said natural gas is being drawn as waste, and the undue use of natural gas has heretofore been defined; and in all such proceedings it shall be the duty of the Attorney General of Louisiana to appear in behalf of said Department, which injunction shall not be dissolved on bond.

Pumps and Compressors Regulation.

Sec. 4. That there is hereby granted to and vested in the Department of Conservation the power to regulate the use of pumps, compressors and other artificial or injurious means of increasing the natural flow.

Must Make Semi-annual Reports.

Sec. 5. That every person, association, partnership or corporation engaged in selling natural gas or using natural gas in the manufacture of any article of commerce, or for fuel in manufacturing enterprises, shall make semi-annual reports under oath to the Department of Conservation upon blanks to be furnished by the Department showing the manner of use and quantities of natural gas used or sold as aforesaid.

Semi-annual Report by Department.

Sec. 6. That the Department of Conservation shall make a full and complete report semi-annually to the Governor of the situation in the various natural gas fields within the State, and shall likewise file with the President of the Police Jury of each Parish within which natural gas is produced a statement showing the situation concerning the present and future supply of natural gas within such year.

Duty of District Judges.

Sec. 7. That it shall be the duty of the District Judges in those Parishes wherein natural gas is produced or found, to charge the grand juries to inquire into the waste of natural gas or the use being made of natural gas for any purpose whatsoever that is threatening with premature exhaustion, extinction or destruction the common source or reservoir from which said natural gas is being drawn, as waste and the undue use of natural gas has heretofore been defined.

Penalties.

Sec. 8. That each violation of this Act shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not less than thirty days nor more than sixty days, or both in the discretion of the Court, and in default of the payment of the fine imposed by imprisonment for an additional time not exceeding six months, and each day this Act is violated shall constitute a separate of-

fense hereunder after written notification given to the offender by authority of the said Department of Conservation.

Sec. 9. That this Act shall not repeal the existing laws on this same subject matter unless the same are inconsistent with the provisions of this Act.

ACT FOR PROTECTION OF SOURCE OF SUPPLY OF NATURAL GAS

(ACT 270 OF 1918)

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That, in order to further conserve the natural gas in the State of Louisiana, whenever the full production from any common source of supply of natural gas in this State is in excess of the market demands, then any person, firm, corporation having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation, securing any unfair proportion of the gas therefrom; provided that the Conservation Commission of Louisiana may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable.

Offering Gas for Sale.

Sec. 2. That every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this State, shall be common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale which may be brought in pipes and connecting lines by the owner or proposed seller to its trunk lines, at the seller's expense, or to its gathering lines, without discrimination in favor of one producer as against another, or in favor of any one source of

supply as against another save as authorized by the Conservation Commission of Louisiana after due notice and hearing, but if any such person, firm or corporation shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably, and any common purchaser of gas shall have the same right to purchase the product of any gas well or wells that are not being utilized under the conditions of this Act; and in the event the owner of said well or wells refuses to sell, the common purchaser shall have the same rights of action against such owner or owners as the seller has against the common purchaser who refuses to buy, and the seller so refusing to sell shall be subject to the same penalties—etc., provided against the common purchaser who refuses to buy. This Act shall not affect in any way a municipal corporation engaged in buying and selling natural gas, or any corporation that builds or maintains a pipe line or distribution system for the purchase and sale of natural gas, the direct ownership of which shall vest in, or which may under charter or franchise provisions ultimately vest in or be acquired by any municipality.

Not to Discriminate.

Sec. 3. That no common purchaser shall discriminate between like grades and pressures and natural gas, or in favor of its own production or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of pro-rating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion such production bears to the total production available for marketing.

Gas to Be Measured by Meter.

Sec. 4. That all gas produced from the deposits of this State when sold shall be measured by meter and the Conservation Commission of Louisiana shall, upon notice and hearing, relieve any common purchaser from purchasing gas of an inferior grade or quality, and the Commission shall from time to time make such regulations for delivery, metering and equitable purchase and taking as conditions may necessitate.

Department to See Provisions Are Complied with.

Sec. 5. That it shall be the duty of the Conservation Commission of Louisiana to see that the provisions of this Act are fully and properly complied with and it shall be further the duty of the District Attorney, in whose district any violation takes place, on application of the Conservation Commission of Louisiana, to bring such suit or suits as may be necessary to enforce the provisions of this Act and any injunction which may be necessary shall be furnished without bond.

Penalties.

Sec. 6. That any person, firm or corporation or partnership violating any of the provisions of this Act shall be guilty of a misdemeanor and on conviction thereof in any court of competent jurisdiction be liable and fined not less than \$50.00, nor more than \$500.00 or be subject to imprisonment for thirty days or be liable to both fine and imprisonment in the discretion of the Court for each offense, each day's continuation of such violation shall be and is hereby declared to be a separate offense.

Sec. 7. That all laws or parts of laws in conflict herewith be and the same are hereby repealed.

NEBRASKA.

Nebraska has no oil or gas Statutes but there is an Act in force in its present shape since 1903, offering a reward of \$15,000 for the opening of a 50 barrel well or well producing 500,000 cubic feet of gas per diem. Act of 1903, p. 359.

NEW MEXICO.**OIL PLUGGING ACT****§ 3986. Well to Be cased Against Waters.**

Section 1. That the owner or operator of any well put down for the purpose of exploring for and producing oil or gas shall,

before drilling into the oil or gas-bearing rock, incase the well with good and sufficient casing, and in such manner as to exclude all surface or fresh water from the lower part of such well, and from penetrating the oil or gas-bearing rock. Should any well be put down through the first into a lower oil or gas-bearing rock, the same shall be cased in such manner as will exclude all fresh or salt water from both upper and lower oil or gas-bearing rocks penetrated. Act of June 8, 1912, § 1.

§ 3987. How Wells to Be Plugged.

Sec. 2. The owner of any well, when about to abandon or cease operating the same, for the purpose of excluding all fresh or salt water from penetrating the oil or gas-bearing rocks, and before drawing the casing, shall fill the well with sand or rock sediment to the depth of ten feet above the top of each oil or gas-bearing rock, and drive therein a round tapered, seasoned wooden plug at least two feet in length, and in diameter equal to the full diameter of the well below the casing, and immediately upon drawing the casing shall fill in on top of such plug with sand or rock sediment to the depth of five feet, and again drive into the well a round wooden plug three feet in length, the lower end tapering to a point and to be of the same diameter at the distance of eighteen inches from the smaller end as the diameter of the well above the point at which the casing rested and the plug is driven; and after such plug has been driven, the well shall be filled with sand or rock sediment to the depth of not less than twenty feet. *Id.*, § 2.

§ 3988. On Default of Owner, Injured Party May Plug.

Sec. 3. Whenever any person may be injured by the neglect or refusal to comply with the provisions of the preceding section, it shall be lawful for such person, after notice to the owner, lessee or care taker of the premises upon which such well is located, to enter upon and fill up and plug such well in the manner provided in this chapter, and thereupon to recover the expense thereof, from the person or persons whose duty it was

to plug or fill up such well in like manner as debts of such amounts are recoverable, and shall have a lien upon the fixtures and machinery and leasehold interests of the owner or operator of such well. *Id.*, § 3.

§ 3989. Penalty for Neglect to Case or Plug.

Sec. 4. Any person, owner, driller, or operator violating the provisions of the first or second section of this chapter, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment at the discretion of the court. *Id.*, § 4.

NEW YORK.

Flugging Abandoned Oil Wells. Flooding.

Sec. 308. Whenever any well shall have been put down for the purpose of exploring for and producing oil or gas, upon abandoning or ceasing to operate the same, the owner or operator shall, for the purpose of excluding water from the oil or gas-bearing rock, and before drawing the casing, fill up the well with sand or rock sediment to the depth of at least twenty feet above the third sand or oil-bearing rock, in case of an oil well, or any gas-bearing rock, in case of a gas well; and in case of an oil well, drive a round, seasoned wooden plug, at least two feet in length, equal in diameter to the diameter of the well below the casing, to a point at least five feet below the bottom of the casing, and whether an oil or gas well, immediately after the drawing of the casing, shall drive a round, wooden plug into the well at the point just below where the lower end of the casing shall have rested, which plug shall be at least three feet in length, tapering in form, and to be of the same diameter at the distance of eighteen inches from the smaller end as the diameter of the well below the point at which it is to be driven; and after it has been properly driven, shall fill in on top of same with sand or rock sediment to the depth of at least five feet.

Provided, however, that this section shall not prevent the use of any such well for the operation known as "flooding," in lieu of plugging, if such flooding be done according to the recognized proper methods, and if the owner or operator of the well shall have filed with the clerk of the town in which the well is situated, when the taking of oil therefrom has ceased, a statement in writing that the well, to be designated with common certainty, is reserved for purposes of flooding, and if such owner or operator shall have begun, in good faith, the flooding of such well within three months after the taking of oil therefrom has ceased. Act 1919, p. 855 being substitute for § 308, Act of 1909, chap. 25.

Misdemeanor to Fail to Plug.

Sec. 309. Any person who shall violate the provisions of the last section shall, upon conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine of not less than two hundred nor exceeding five hundred dollars, or by imprisonment in the county jail of the county where the conviction shall be had, for a time not exceeding one year, or both such fine and imprisonment, in the discretion of the Court before whom such conviction shall be had; one-half of the fine so imposed to be paid to the informer, the residue to the use of the school district in which such well may be situated. Cons. Laws. chap. 20, 1909.

Neighbor May Plug Well at Owner's Expense.

Sec. 310. Whenever any owner or operator shall neglect or refuse to comply with the provisions of section three hundred and eight of this Article, the owner of, or operator upon, any land adjoining that upon which such abandoned well may be, may enter, take possession of such abandoned well and plug the same, as provided by this Article, at the expense of the owner or operator whose duty it may be to plug the same. *Id.*

Incorporation of Pipe Line Company.

Sec. 40. Twelve or more persons may become a corporation for constructing and operating for public use, except in the city of New York, lines of pipe for conveying or transporting therein

petroleum, gas, liquids or any products or property, or for maintaining and operating any line of pipe already constructed and owned by any corporation, person or persons, except in such city, for the public use, by making, signing, acknowledging and filing a certificate stating the name of the corporation, the number of years it is to continue, the places from and to which it is to be constructed or maintained and operated, its length as near as may be, the name of each county through or into which it is to be constructed; the amount of its capital stock, which shall not be less than fifteen hundred dollars for every mile of pipe constructed or proposed to be constructed, and the number of shares of which it shall consist; the number of directors not less than seven, and the names and places of residence of the directors for the first year, and the place of residence of each subscriber and the number of shares he agrees to take in such corporation, which must in the aggregate equal ten hundred and fifty dollars for every mile of pipe constructed or proposed to be constructed and twenty-five per centum of which must be paid in cash.

Must Show Stock Subscribed.

Such certificate shall have indorsed thereon or appended thereto and as a part thereof, an affidavit made by at least three of the directors named therein that at least ten hundred and fifty dollars of stock for every mile of line proposed to be constructed or maintained and operated has been in good faith subscribed, and twenty-five per centum paid in money thereon, and that it is intended in good faith to construct or to maintain and operate the line of pipe mentioned in such certificate, and that such corporation was not projected or formed with the intent or for the purpose of injuring any person or corporation, nor for the purpose of selling or conveying its franchise to any person or corporation, nor for any fraudulent purpose.¹

¹ The above and the next ten sections are printed in the Birdseye compiled laws p. 8989 and were revised from Act of 1878, chap. 203; 1890, chap. 566; 1909, chap. 219.

Location of Line. Map.

Sec. 41. Every such corporation shall before commencing the construction of its pipe line in any county, or any proceeding for the condemnation of real property, plainly and distinctly mark and designate the line adopted and located by it by a line of stakes consecutively numbered and equally distant, and not more than twenty rods from each other, so that each line can be definitely known and ascertained in all places, and make a map and survey of the route so located and staked out, and shall indicate thereon plainly the points where such route crosses each parcel of land to which it has not acquired title by agreement and shall cause such map and survey to be certified by the president and engineer, and filed in the office of the clerk of the county into or through which the line so located and mapped passes, and shall give to the owner or occupant, if he is known or can be ascertained, of every parcel of land through which such route passes, the title to which has not been acquired by purchase, written notice of the filing of such map and survey, stating that such route passes over or across such owner's or occupant's lands, and that the route thereof is indicated thereon by such line of stakes.

Hearing to Adjust Line.

Any occupant or owner of such lands feeling aggrieved by the proposed location may, within fifteen days after the service of such notice, give ten days' written notice to the corporation, by service upon the president, engineer, or any director thereof, and to the owner or occupant of any lands to be affected by the alteration to be proposed by him, of the time and place of an application to be made by him to a special term of the Supreme Court in the judicial district in which the lands are situated for the appointment of commissioners to relocate such line. If upon the hearing the Court shall consider that sufficient cause exists therefor, it shall appoint three disinterested persons commissioners to examine the route located and the proposed alteration thereof, and direct the mode of proceeding, who shall report to the Court the facts relating thereto and their opinion as to

the proposed alteration, and what, if any, alteration should be made in such line, and the Court shall thereupon make such order as it shall deem proper in relation to such alteration, and determine the location of such line, and fix and adjust the costs, fees and charges of the commissioners, and the costs and charges of the proceedings, and direct by which party the same shall be paid, and may enforce payment thereof by proceedings as for a contempt of Court, for refusal to pay costs directed to be paid by an order of the Court, and such order shall be final as to the location of the line upon the lands embraced therein. Such corporation shall not commence the work of constructing or laying its line or pipe, or institute proceeding for the condemnation of real property, in any county until after the expiration of fifteen days from the service by it of the notice herein required, nor until all applications for a relocation of its line in such county, if any are made, have been finally determined.

Condemnation of Real Property. Restrictions.

SEC. 42. In case such corporation is unable to agree for the purchase of any real estate required for the purpose of its corporation, and its line of pipe in the county in which such real estate is situated has been finally located, it shall have the right to acquire title thereto by condemnation, but such corporation shall not locate or construct any line of pipe through or under any building, dooryard, lawn, garden or orchard, except by the consent of the owner thereof in writing duly acknowledged, or through any cemetery or burial ground, nor within one hundred feet of any building, except where such line is authorized by public officers to be laid across or upon any public highway, or where the same is laid across or upon any turnpike or plank-road.

City Streets.

No pipes shall be laid for the purpose of carrying petroleum, gas or other products or property through or under any of the streets in the cities of this State, unless such corporation shall

first obtain the consent of a majority of the property owners on the streets which may be selected for the laying of pipe, and such pipe line shall be located with all reasonable care and prudence so as to avoid danger from the bursting of the pipes.

Conflicting Rights at Railroad and Other Crossings.

SEC. 43. Whenever any line of pipe of any such corporation shall necessarily cross any railroad, highway, turnpike or plank-road, such line of pipe shall be made to cross under such railroad, highway, turnpike or plank-road and with the least injury thereto practicable, and unless the right to cross the same shall be acquired by agreement, compensation shall be ascertained and made to the owners thereof, or the public in case of highways, in the manner prescribed in the condemnation law, but no exclusive title or use shall be so acquired as against any railroad, turnpike or plank-road corporation, nor as against the rights of the people of this State in any public highway, but the rights acquired shall be a common use of the lands in such manner as to be of the least practical injury to such railroad, turnpike or plank-road, consistent with the use thereof by such pipe line corporation, nor shall any such corporation take or use any lands, fixtures or erections of any railroad corporation, or have the right to acquire by condemnation the title or use, or right to run along or upon the lands of any such corporation, except for the purpose of directly crossing the same when necessary.

Bridges at Crossings. Precautions against Leaks.

SEC. 44. No pipe line shall be constructed upon or across any of the canals of this State, except by the consent of and in the manner and upon the terms prescribed by the superintendent of public works, unless constructed upon a fixed bridge across such canal, and with the consent of the person for whose benefit such bridge is constructed and maintained or upon such a bridge over the canal, at the crossing of a public highway or street with the consent of the public officers having the supervision thereof, or of the municipal authorities of any village or city within whose limits such bridge may be, nor shall the pipes of any such cor-

poration be laid through or along the banks of any of the canals of this State, nor through or under any of its rivers or creeks, unless such pipe shall be encased so as to prevent leakage, in such manner as shall be approved by the superintendent of public works.

Consent of Municipal Authorities.

SEC. 45. No pipe line shall be constructed across, along or upon any public highway without the consent of the commissioners of highways of the town in which such highway is located, upon such terms as may be agreed upon with such commissioners. If such consent or the consent of the commissioners or municipal authorities required by the preceding section cannot be obtained, application may be made to the appellate division of the Supreme Court of the department in which such highway or bridge is situated for an order permitting the corporation to construct its line across, along or upon such highway, or across or upon such bridge. The application shall be by duly verified petition and notice which shall be served upon the commissioners of highways of the town in which the highway is situated, or the municipal authorities of the village or city where such bridge is located, according to the practice or order of the Court, or by an order to show cause, and the Court upon the hearing of the application may grant an order permitting the line to be so constructed in such manner and upon such terms as it may direct.

Consent to Enter Villages and Cities.

SEC. 46. No pipe line shall be constructed into or through any incorporated village or city in this State unless authorized by a resolution prescribing the route, manner of construction and terms upon which granted, adopted at a regular meeting of the board of trustees of the village or the common council of the city by a two-thirds vote of such board or council, but such resolution shall not affect any private right. No pavement shall be removed in any city under the provisions of this article, unless done under the direction of the common council, nor until such corporation shall give a bond in such sum as the common

council may require for the replacing of any pavements which shall have been removed. In case any pavement shall have been removed and not properly relaid, the common council may bring suit in any court of record, for the cost of relaying such pavement against any such corporation. No gas house shall be erected in any city under the provisions of this article, for supplying gas to the inhabitants, unless consent is first given by the corporate authorities of the city.

Across Indian Reservations.

SEC. 47. Such corporation may contract with the chiefs of any nation of Indians over whose lands it may be necessary to construct its pipe line for the right to construct such pipe line upon such lands, but no such contract shall vest in the corporation the fee of such lands, nor the right to occupy the same for any purpose other than for the construction, operation and maintenance of such pipe line, nor shall such contract be valid or effectual until the same has been ratified by the County Court of the county in which the lands are situated.

Over State or Municipal Lands.

SEC. 48. The commissioners of the land office shall have the power to grant to any pipe line corporation any lands belonging to the people of this State which may be required for the purpose of its incorporation on such terms as may be agreed on by them, or such corporation may acquire title thereto by condemnation, and if any lands owned by any county, city or town be required by such corporation for such purposes, the county, city or town officer having charge of such lands may grant them to such corporations upon such terms and for such compensation as may be agreed upon.

Additional Powers to Pipe Line Companies.

SEC. 49. Every corporation formed under this article shall in addition to the powers conferred by the general and stock corporation laws have power:

1. To cause such examinations and surveys of its proposed line of pipe to be made as may be necessary to the selection of the most advantageous route, and for such purpose by its officers, agents or servants may enter upon the lands or waters of any person, upon, through or across which such corporation can construct its line of pipe, under the provisions of this article, subject, however, to liability for all actual damage which shall be done thereto.

2. To take and hold such voluntary grants of real estate and other property, as shall be made to it to aid in the construction, maintenance, operation and accommodation of its pipe line.

3. To lay out its pipe line route not exceeding twelve feet in width, but at the terminations of such line and at all receiving and discharging points and at all places where machinery may properly or must necessarily be set up for the operation of such pipe line it may take such additional width, and for such length as may be necessary.

4. To take and convey through pipes any property, substance or product capable of transportation therein by any force, power or mechanical agency, and to erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the purpose of its incorporation.

5. To regulate the time and manner in which property shall be transported over its pipe lines, and the compensation to be paid therefor, but such compensation shall not exceed the sum or be above the rate of twenty-five cents per hundred miles for the transportation of forty-two gallons of any product transported on lines of one hundred miles in length or over, which shall be reckoned and adjusted upon the quantity or number of gallons delivered by such corporation at the point to which it shall have undertaken to deliver the same.

Storage. Rights of the Public. Common Carriers. Rates and Charges to Be Posted.

SEC. 50. The pipe lines of every such corporation shall be open for transportation to the public use, and all persons desiring to transport products through such pipe line shall have the

absolute right upon equal terms to such transportation in the order of application therefor, on complying with the general requirements of such corporation, as to delivery for and payment of such transportation, but no application for such transportation shall be valid beyond or for a greater quantity of products than the applicant shall then own and have ready for delivery for transportation to such corporation and every such corporation shall provide suitable and necessary receptacles for receiving all such products for transportation, and for storage at the place of delivery until the same can reasonably be moved by the consignee, and shall be liable as common carriers therefor from the time the same is delivered for transportation until a reasonable time after the same has been transported to the place of consignment and ready for delivery to the consignee, which time shall be fixed by general regulation by the corporation, and shall not be less than two days from and after the same shall be ready for delivery and notice thereof given to such consignee, and all rates and charges of every description, for or on account of or in any manner connected with the transportation of any products, shall be fixed by such corporation by general rules and regulations, which shall be applicable to all parties who shall transport any products through such pipe line, or deliver or contract to deliver products for transportation and shall be written or printed and exposed to public view and at all times open to public examination.

Routine as to Vouchers and Deliveries.

SEC. 51. No receipt, certificate or order of any kind shall be made, accepted or issued by any pipe line corporation for any commodity unless the commodity represented by them is actually in possession of the corporation at the time of making, issuing or acceptance thereof. Whenever any such corporation shall have parted with the possession of any commodity and received therefor any order, voucher, receipt or certificate, such order, voucher, receipt or certificate shall not be issued or used again, but shall be canceled with the word "canceled" stamped or printed legibly across the face thereof, and such canceled order,

voucher, receipt or certificate shall be filed and preserved by such corporation and a record of the same kept by the secretary thereof. No petroleum or other commodity received for transportation by such corporation shall be delivered to any person without the presentation and surrender of all vouchers, receipts, orders or certificates that have been issued or accepted for the same.

Monthly Statements to Be Filed.

SEC. 52. Every pipe line corporation shall make monthly a specific statement showing the amount of all commodities received, the amount delivered during the month, and the stock on hand on the last day of each month of the year, and how much of such stock is represented by outstanding certificates, vouchers, receipts or orders, and how much in credit balances on the book of the corporation. Such statement shall be made on or before the tenth day of the succeeding month and verified by the oath of the president and secretary that it is in all respects true and correct, and shall be filed within three days thereafter in the county clerk's office in the county where the principal office of the corporation is located, and a true copy of the same posted in a conspicuous place in its principal office for at least thirty days thereafter.

Fencing. Crossings. Gates. Damages.

SEC. 53. It shall not be necessary for any such corporation to fence the lands acquired by it for the purpose of its incorporation; but, if not enclosed by a substantial fence, the owner of the adjoining land from whom such lands were obtained, his heirs or assigns, may occupy and use such lands in any manner not injurious to the interests of the corporation and shall not be liable therefor, or for any trespass upon any such lands except for wilful or negligent injuries to the pipes, fixtures, machinery or personal property of the corporation. If the corporation shall keep such lands enclosed it shall construct and provide all suitable and necessary crossings with gates for the use and convenience of any owners of lands adjoining the portion of its

lands so enclosed, and no claim shall be made by it against any owner of adjoining lands to make or contribute to the making or maintaining of any division fence between such adjoining lands and its lands, and if it shall neglect to keep and maintain substantial fences along its lands the owners of adjoining lands may construct and maintain all farm or division fences, and all line fences crossed by such pipe line in the same manner as though it had not acquired such lands for such pipe line, and it shall be liable for all injuries to such fences caused or done by any of its officers or agents, or any persons acting in their or its behalf, or by any laborer in its or their employ or in the employ of any of its contractors.

Taxed Same as Railroads.

SEC. 54. The real estate and personal property belonging to any pipe line corporation in this State shall be assessed and taxed in the several towns, villages and cities in the same manner as the real estate and personal property of railroad corporations are assessed and taxed, and such corporation may pay such taxes or commute therefor in the same manner as railroad corporations.

By Act of 1889, chap. 422, natural gas companies organized to drill for it and distribute it were given the right of eminent domain with the usual condition requiring municipal consent where the trenches encroach upon streets and the right of preliminary survey. See 8 Birdseye's Cons. St., p. 8988.

OHIO.

Casing to Protect against Water.

The owner or operator of a well for the production of petroleum oil, natural gas or mineral water, before drilling into the oil and gas-bearing rock, shall encase such well with good and sufficient wrought iron casing, so that the surface or fresh water from the lower part of such well will not penetrate the oil or gas-bearing rock. If a well is drilled through the first oil or gas-bearing rock into a lower one, it must be cased so as to

exclude all fresh water above the last oil or gas-bearing rock penetrated. (90 v. 24, par. 1; 2 General Code 1910, § 6311.)

Abandoned Well to Be Cemented.

The owner or operator of a well constructed for any of the purposes named in the next preceding section, intending to abandon or cease operating it, and before drawing the casing therefrom, shall securely fill such well with rock sediment, or mortar composed of two parts sand and one part cement, to the depth of two hundred feet above the top of the first oil or gas-bearing rock, so as to prevent the surface or fresh water from penetrating to the oil or gas-bearing rock, and the gas and oil from escaping therefrom. (90 v. 24, par. 2; 2 General Code 1910, § 6312.)

Strangers May Act on Owners Failure to Comply.

If such owner or operator fails to comply, or inefficiently complies with the next preceding section, the owner of the land upon which such well is situated shall forthwith comply therewith. If all the persons heretofore named fail to so fill, or inefficiently so fill such well, any person, after written demand therefor to any of such persons, may enter, take possession of such well and fully comply with such section. (90 v. 24, par. 2; 2 General Code 1910, § 6313.)

Costs and Expenses to Be a Lien.

The reasonable cost and expense of so filling such well shall forthwith be paid by such owner or operator, and on his default, by the owner of the land. The amount of such cost and expense shall be a lien upon the fixtures, machinery and leasehold interest of the owner and operator and upon the interest of the landowner in the land upon which the well is situated, and may be recovered and enforced against the owner or operator and the landowner in the order named. (90 v. 24, par. 2; 2 General Code 1910, § 6314.)

Waste of Gas Prohibited.

A person, copartnership or corporation, in possession as owner, lessee, agent or manager of a well producing natural gas, in order to prevent the gas wasting by escape, shall shut in and confine the gas therein, within ten days after penetrating the gas-bearing rock, until such time as it is utilized for light, fuel or power purposes. (90 v. 25, par. 3; 2 General Code 1910, § 6315.)

Flambeau Restrictions Not to Apply to Oil Well.

The provisions of the next preceding section shall not apply to an oil well. (90 v. 25, par. 3; 2 General Code 1910, § 6316.)

Flambeau Lights. Jumbo Burners.

A person, copartnership or corporation shall not use natural gas for illuminating purposes on flambeau lights; but "jumbo" burners or other burners consuming no more gas than such "jumbo" burners may be so used. A person, copartnership or corporation consuming natural gas with such burners in the open air or in or around derricks, shall turn it off not later than eight o'clock in the morning of each day such lights or burners are used, and shall not turn on or relight it between the hours of eight o'clock a. m. and five o'clock p. m. (92 v. 78, par. 4; 2 General Code 1910, § 6317.)

Proviso as to Flambeaux and Jumbos.

The next preceding section shall not prohibit the burning of flambeau lights within the derrick of a drilling well or for lighting the streets of cities and villages. (92 v. 78, par. 4; 2 General Code 1910, § 6318.)

Specific Penalty.

A person, copartnership or corporation violating any provision of this chapter shall be liable to a penalty of one hundred

dollars, to be recovered, with costs of suit, in a civil action in the name of the State in the county in which the act was committed or omitted. Such suit may be brought at the instance of a resident of this State without security or liability for costs. Such penalty shall be paid one-half into the school fund of the county in which such suit is brought and one-half to such person at whose instance such suit was brought. (90 v. 25, par. 5; 2 General Code 1910, § 6319.)

Gas and Oil Leases to Be Recorded.

All leases and licenses and assignments thereof, or of any interest therein, given or made, for, upon, or concerning lands or tenements in this State, whereby any right is given or granted to operate, or to sink or drill wells thereon for natural gas and petroleum or either, or pertaining thereto, shall be filed for record, forthwith, and recorded in such lease record, without delay, and not be removed until recorded. (R. S. § 4112a; 2 General Code 1910, § 5818.)

Effect of Failure to Record.

No such lease or license shall have any force or validity until it is filed for record as aforesaid, except as between the parties thereto, unless the person claiming thereunder is in actual and open possession. (R. S. § 4112a; 2 General Code 1910, § 8519.)

Parties to Lease Cancellation Suits.

The plaintiff in an action to cancel such lease or license, or in any way involving it, shall only be required to make the person or persons defendants, so far as such lease or license may be involved, who claim thereunder and are in possession as heretofore stated, and those who then appear of record, or by the files in such office, to own or have an interest in such lease or license, fully and finally to adjudicate and determine all questions made or involved therein concerning it. If there be no person in possession and claiming as heretofore specified, and no record or writing or file as heretofore stated and required, then

so far as such lease or license is involved, it will only be necessary to make the original lessee or licensee defendant, fully and finally to adjudicate and determine all questions made or involved concerning such lease or license. (R. S. § 4112a; 2 General Code 1910, § 8520.)

GAS AND OIL WELLS.

Verified Map of Coal, Gas and Oil Lands.

Upon notice from the chief inspector of mines, or from a district inspector, each person, firm or corporation, engaged in drilling or exploring for natural gas or oil upon land from which coal is being mined, shall make an accurate map thereof, showing the boundaries of each tract of land drilled upon, the buildings and all monuments found upon the premises. Each well shall be plainly marked by a name, number or letter, and located whenever possible with reference to some well-defined and lasting monument. Such map shall contain a sworn statement of the person, firm or corporation operating such oil or gas wells that it is a true representation of the property. Within sixty days after such notice, a copy of such map shall be filed in the office of the chief inspector. (R. S. § 306-1; 1 General Code 1910, § 943.)

Map of Coal Mine on Oil Land.

Before mining for coal, each person, firm or corporation leasing land for such purposes, upon which gas or oil wells have been drilled to, or below any seams or veins of such coal, shall make, or cause to be made, and file in the office of the chief inspector of mines such a map as is desired in the preceding section. (R. S. § 306-2; 1 General Code 1910, § 944.)

Sealing of Wells Penetrating Coal.

If a person, firm or corporation sinks a well for gas or oil through a mine in which coal or other mineral is being mined; the person drilling such well shall drill it to a depth of not less than ten feet below the vein of coal or other mineral, case such

hole and seal it upon the outside of the casing with suitable material to the level of the coal floor. Each vein of mineral coal being mined, pierced by such well, shall be sealed in the manner. (R. S. § 306-3; 1 General Code 1910, § 945.)

Idem, When Well Abandoned.

Before abandoning or ceasing to operate a well drilled for oil or gas, which passes through a vein of mineral coal, and before drawing the casing therefrom, the owner of such well shall seal it by driving in such well to a depth of not less than ten feet below the floor of the lowest coal measure, a round, seasoned, wooden plug at least three feet in length, and equal in diameter to the diameter of the well at that point. On the top of such plug he shall fill at least seven feet of sediment or drillings, or cement and sand. Upon abandoning or ceasing to operate a gas or oil well which passes through any gas or oil-bearing rock lying above the coal measures, the owner of such well or his agent shall drive to a point as near as possible to the top of the coal vein a dry wooden plug not less than two feet in length, and equal in diameter to the diameter of the hole. On the top of such plug, he shall fill at least five feet of sediment or drillings, or cement and sand, as a mine inspector shall direct. (R. S. § 306-4; 2 General Code 1910, § 946.)

Penalty for Non-Compliance.

Each person, firm or corporation, failing to comply with any of the provisions of the preceding four sections, shall be subject to a forfeiture of not less than one hundred nor more than two hundred dollars, to be recovered by action in the name of the State, and on collection paid into the court of common pleas of the county wherein any such well is located or of Franklin county. (R. S. § 306-5; 2 General Code 1910, § 947.)

Additional Penalty.

Whoever violates any provisions of such four sections shall

be fined not less than fifty dollars, nor more than two hundred dollars, or be imprisoned not less than ten days nor more than thirty days, or both. (R. S. § 306-5; 2 General Code 1910, § 948.)

ACT AMENDING SECTIONS 973, 914, AND 976

Section 1. That sections 973, 914, and 976 of the General Code be amended to read as follows:

Map of Oil and Gas Wells in Coal Townships.

SEC. 973. Any person, firm, or corporation holding property in any coal bearing or coal producing township, in any county of the state of Ohio, either in fee, by virtue of a lease for oil or gas, mining purposes since January first, 1900, or otherwise, whereon wells have been drilled for oil, gas or test purposes, shall cause to be made by a competent engineer, an accurate map on a scale of not less than one inch to four hundred feet, showing on said map the location and number of wells as near as same can be located, that have been drilled, whether or not any of such wells have been previously abandoned, or were drilled and abandoned by former operators, who have ever held the said property for oil, gas or mining purposes.

Details of Such Map.

Said map shall show the name and address of the person, firm or corporation owning said well or wells, the county and township, the names of the adjoining property owners, and lines of the property operated with the distances of the wells properly measured therefrom and checked from the section and quarter section lines, as will be necessary for an accurate survey. The map shall show all the engineer's notations of angles, distances, starting points, or corner stones, together with the numbers given the respective wells, giving a legend as to the manner in which various abandoned or producing wells, are designated. The original map shall be retained by the owner or his agent, and one copy filed with the industrial commission of Ohio, divi-

sion of mines, said copy showing thereon the sworn statement of the engineer making the map, that same is correct.

Limitation with Respect to Mine Opening. 300 Feet Protection to Coal Mine Adits.

No oil well, gas well or test well shall be drilled nearer than three hundred feet to any opening to a mine used as a means of ingress or egress for persons employed therein, nor nearer than one hundred feet to any building or inflammable structure connected therewith, and actually used as a part of the operating equipment of said mine.

Permit to Drill Required in Coal Townships.

Any person, firm or corporation before drilling or causing to be drilled any oil well, gas well or test well within the limits of any coal producing township in any county of the State of Ohio, shall first file an application with the industrial commission of Ohio, division of mines, on blanks to be furnished by said commission for such purpose, and shall show the following: The name and address of the applicant, the proper date, location of the proposed well—giving the name of the property owner, section number, township and county, the number of the proposed well, and signed by an officer or agent of such operator. No well shall be commenced until the applicant or operator has been granted a permit, which shall be granted by the industrial commission of Ohio, division of mines, under the following conditions:

Map Demanded before Permit.

If such proposed well is located within the limits directly adjacent to mining operations, such limits to be determined by the industrial Commission of Ohio, division of mines, the application for permit must be accompanied by a map showing the location of the proposed well and answering the requirements in the preceding regulations for mapping.

If such proposed well is not located within the limits directly adjacent to mining operations, but within the limits of any coal

producing or coal-bearing township, the industrial commission of Ohio, division of mines, shall grant a permit immediately upon receipt of the application, providing the applicant is a responsible person, firm or corporation. The industrial commission of Ohio, division of mines, may at any time after the well is commenced, if the responsibility of the applicant or operator is considered doubtful, cause such operator or applicant to show proper guaranty of his intention to fulfill the requirements of this section, or cause all operations to cease forthwith. If any person, firm or corporation continues drilling on property already surveyed in accordance with the preceding requirements, a complete blue print or copy of map shall be made at the end of each year ending June 30, showing the additional wells properly surveyed by a competent engineer as above mentioned, and filed with the industrial commission of Ohio, division of mines, not later than the following first of September.

Abandonment Regulated.

When any oil well, gas well or test well is to be abandoned, the person, firm or corporation owning such well shall notify the industrial commission of Ohio, division of mines, or the deputy oil and gas well inspector of the district in which the well is located, as many days in advance as will be necessary for the inspector to arrange to be present at such abandonment. No well shall be abandoned without an inspector being present, unless permission has been first granted upon good cause shown, by the industrial commission of Ohio, division of mines.

Abandoned Wells to Be Plugged and Cemented.

When any oil well, gas well or test well is to be abandoned, it must first be plugged in some secure manner above the oil or gas sand or rock formation, either by placing or driving one or more good seasoned wooden plugs, or a lead plug, as the case may require, so that no gas or oil may escape, or any water or destructive matter force itself into the oil or gas sand, or rock formation. Upon such seasoned wooden plug or plugging material shall be filled at least thirty feet of cement properly mixed

with sand, or thirty feet of good clay or rock sediment properly prepared.

If any well has passed through a workable vein or seam of coal, it shall when it is abandoned be plugged in the following manner: A seasoned wooden plug shall be driven to a point thirty feet below the lowest workable seam of coal and the hole filled with cement to a point at least twenty feet above this seam of coal, at which point another wooden plug shall be placed and the hole filled for a distance of twenty feet with cement or properly prepared clay, or rock sediment. If there is more than one seam of coal the next seam above must be plugged off in like manner.

Details of Casing When Well Penetrates Mine.

In the event that a well being drilled penetrates the excavations of any mine, it must be cased with casing of approximately the same diameter as the diameter of the hole, the hole to be drilled thirty feet or to solid slate or rock and not less than ten feet below the floor of such mine, and the casing shall be placed in the following manner: One string of casing shall be placed at a point above the roof of said mine so as to shut off all of the surface water; then the hole drilled through said mine and another string of casing put in. The bottom of the second string of casing, or the one passing through said mine, shall not be nearer than ten feet, or more than thirty feet from the floor of the mine where it passes through the same.

When any well which has been drilled is to be abandoned and has passed through the excavations of any coal mine from which the minable coal has not all been removed, the person, firm or corporation owning said well shall leave in said well the casing passing through said mine from a point not less than ten feet, nor more than thirty feet below the floor of said mine, and extending above the roof of said mine at least five feet. A seasoned wooden plug shall be driven to a point at least forty feet below the floor of the mine and the hole above said plug together with the casing left in, which extends through the coal, shall be filled with cement; then a seasoned wooden plug shall be driven

on the top of said casing, and the hole filled with cement for a distance of not less than twenty feet.

"Coal Bearing or Coal Producing Township" Defined.

A coal bearing or coal producing township of any county shall be interpreted to mean any township as a unit, in which coal is found that is being mined, or is of such thickness as to make it likely to be mined at some future time. Any well drilled in such township, whether or not it passes through any coal, the same being barren in certain sections of such township, or the well being commenced below the line of outcrop of the coal, will nevertheless be required to be mapped and abandoned in accordance with the regulations and provisions of this section as given above, which shall apply uniformly throughout any coal bearing or coal producing township of any county. Sec. 1, Act 1917 p. 630.

Designation and Supervision of Coal Townships.

SEC. 914. The chief deputy inspector of mines and the oil and gas well inspector shall designate the townships in the various coal producing counties of Ohio, which shall be considered coal bearing or coal producing townships, to be included under the regulations as prescribed in section 973 relating to the mapping, drilling and abandonment of oil, gas or test wells. The chief deputy inspector of mines shall allow all matter pertaining to the mapping and drilling of oil and gas wells to be under the direct supervision of the oil and gas well inspector, except when wells are to be drilled, or have been drilled directly adjacent to some mining operation, or in case any arrangement for the drilling of an oil or gas well must necessarily be made in mutual understanding and consideration with some mining operation, or whenever the proper protection of the coal deposits is in question.

Supervision of Permits, Maps and Plugging.

The oil and gas well inspector shall supervise the granting of permits to drill or abandon a well, the filing and reprinting of

maps of oil, gas or test wells, and see that all the provisions relating to the mapping, drilling, and abandonment of such wells are strictly complied with. In any case where the plugging method as outlined in section 973 cannot be applied, or if applied, would be found ineffective in carrying out the intended protection, which the law is meant to give, the oil and gas well inspector may designate the method of plugging to be used, in all such cases causing the abandonment report to show the manner in which the work was done.

Designation of Counties. Regulations.

The oil and gas well inspector shall designate the counties or townships thereof which shall compose the different districts of the respective deputy oil and gas well inspectors, or change such districts whenever in his judgment the best interests of the service so demands. He shall issue instructions and regulations for the government of the deputy inspectors as will be consistent with the powers and duties vested in them by law, and secure the proper protection which the law intended. The oil and gas well inspector shall give such personal assistance to the deputy inspectors as they may need and make such personal inspection as he deems necessary throughout all the districts, at any time.

Enforcement of Regulations. Right of Appeal.

Each deputy oil and gas well inspector shall carry out the instructions of the oil and gas well inspector with reference to the enforcement of the regulations provided in section 973, or other regulations that are deemed necessary to insure the protection which this section intends. Any person, firm or corporation dissatisfied with the ruling of the chief deputy inspector of mines, or the oil and gas well inspector under the provisions of this section shall have the right of appeal to the industrial commission of Ohio within ten days from the date of such ruling. Sec. 2, Act. 1917, p. 630.

Penalty against Coroner.

SEC. 976. Any county coroner who, after receiving notice of

a fatal accident, or of an accident which has resulted in the death of a person, at, in, or around a mine, from the owner, lessee or agent of such mine, or the chief inspector of mines, wilfully refuses or neglects to comply, so far as such provisions relate to him, with the provisions of section nine hundred and twenty-one of the General Code, shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than fifty dollars, at the discretion of the court.

Penalties against Owners and Lessees.

Any owner, lessee or agent of a mine, or any person, firm or corporation opening a new mine, having written knowledge of a violation of this act, who wilfully refuses or neglects to comply with the provisions of sections nine hundred and twenty-two, nine hundred and twenty-three, nine hundred and twenty-four, nine hundred and twenty-five, nine hundred and twenty-six, nine hundred and twenty-seven, nine hundred and twenty-eight, nine hundred and twenty-nine, nine hundred and thirty, nine hundred and thirty-one, nine hundred and thirty-two, nine hundred and thirty-three, nine hundred and thirty-four, nine hundred and thirty-seven, nine hundred and thirty-eight, nine hundred and thirty-nine, nine hundred and forty, nine hundred and forty-one, nine hundred and forty-two, nine hundred and forty-three, nine hundred and forty-four, nine hundred and forty-five, nine hundred and forty-six, nine hundred and forty-seven, nine hundred and forty-eight, nine hundred and forty-nine, nine hundred and fifty, or nine hundred and seventy-one of the General Code, shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than fifty dollars, and for a second or any subsequent offense shall be fined not less than fifty dollars nor more than one hundred dollars, at the discretion of the Court.

Penalties against Superintendent or Foreman.

Any superintendent, mine foreman, foremen or overseer, who wilfully refuses or neglects to comply, so far as such provisions relate to each of them with the provisions of sections nine hun-

dred and fifty-one, nine hundred and fifty-two, nine hundred and fifty-three, and nine hundred and fifty-four of the General Code, shall, upon conviction thereof, be fined not less than ten dollars nor more than twenty-five dollars, and for a second or subsequent offense shall be fined not less than ten dollars nor more than twenty-five dollars, or imprisoned not less than ten days nor more than twenty days, or both, at the discretion of the Court.

Penalties in Fire-damp Cases.

Any person or persons who wilfully refuses or neglects to comply with the provisions of section nine hundred and fifty-five of the General Code, or enters a mine generating fire-damp before it is reported by the fire boss that it is safe for persons to enter, or goes beyond a danger signal indicating an accumulation of fire-damp, as forbidden by the provisions of section nine hundred and fifty-nine of the General Code, shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than fifty dollars, and for a second or any subsequent offense shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned not less than ten days nor more than twenty days, or both, at the discretion of the Court.

Any person or persons who violates the provisions of sections nine hundred and fifty-six, nine hundred and fifty-seven, nine hundred and fifty-eight, nine hundred and sixty, nine hundred and sixty-one, nine hundred and sixty-two of the General Code, or violates the provisions of section nine hundred and fifty-nine of the General Code other than to enter a mine generating fire-damp, before the fire boss reports it safe, or to go beyond a danger signal indicating an accumulation of fire-damp, shall, upon conviction thereof, be fined not less than five dollars, nor more than ten dollars, and for a second or any subsequent offense shall be fined not less than five dollars nor more than ten dollars, or imprisoned not less than five days nor more than ten days, or both, at the discretion of the court.

Loitering and Liquor.

Any person who wilfully violates the provisions of sections

nine hundred and sixty-four, nine hundred and sixty-five, nine hundred and sixty-six, nine hundred and sixty-seven or nine hundred and seventy of the General Code or violates the provisions of section one hundred and fifty-nine of the General Code relating to loitering and intoxicants, at, in or around a mine, shall, upon conviction thereof, be fined not less than five dollars nor more than ten dollars, or imprisoned not less than five days nor more than ten days, or both, at the discretion of the Court.

Further Penalties. Well Not Properly Plugged.

Any person, firm or corporation who violates or wilfully refuses or neglects to comply with the provisions of section 973, shall, upon conviction thereof, be fined not less than one hundred dollars, nor more than five hundred dollars, and for a second or any subsequent offense shall be fined not less than two hundred dollars and not more than one thousand dollars, or imprisoned not less than thirty days nor more than six months, at the discretion of the Court. In addition, if the material is pulled out of a well which was not plugged in accordance with the provisions of section 973, the person, firm or corporation causing such offense may be made to clean out such well and properly plug the same, or pay the entire reasonable cost of such work being done under orders of the industrial commission of Ohio, division of mines, within thirty days.

Sale of Prohibited Lighting Material.

Any person, firm or corporation who compounds, sells or offers for sale to dealers any oil or paraffine wax, fish oil or any other illuminant whatever, other than those specifically provided for in section 974, General Code, unless with the consent and approval of the chief inspector of mines, for illuminating purposes in any mine in this State contrary to the provisions of sections nine hundred and seventy-four and nine hundred and seventy-five of the General Code, shall, upon conviction thereof, be fined not less than fifty dollars nor more than one hundred dollars, and for a second or any subsequent offense shall be fined not less

than one hundred dollars nor more than two hundred dollars, or imprisoned not less than thirty days nor more than sixty days, or both, at the discretion of the Court.

Approval of Chief Inspector. Luminants.

Any person, firm or corporation who sells, or offers for sale to any employee of a mine for illuminating purposes in a mine any oil or paraffine wax, fish oil or any other illuminant, other than those specifically provided in section nine hundred and seventy-four of the General Code, unless with the consent and approval of the chief inspector of mines, contrary to the provisions of section nine hundred and seventy-four and nine hundred and seventy-five of the General Code, shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than fifty dollars and for a second or any subsequent offense shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned not less than ten days nor more than twenty days, or both, at the discretion of the Court.

Use of Prohibited Lighting Material.

Any person who knowingly uses for illuminating purposes in a mine, any oil or paraffine wax, fish oil or any other illuminant whatever other than those specifically provided for in section nine hundred and seventy-four of the General Code, unless with the consent and approval of the chief inspector of mines, contrary to the provisions of sections nine hundred and seventy-four and nine hundred and seventy-five of the General Code, shall, upon conviction thereof, be fined not less than five dollars nor more than ten dollars, and for a second or any subsequent offense shall be fined not less than five dollars nor more than ten dollars, or imprisoned not less than five days nor more than ten days, or both, at the discretion of the Court. Sec. 1, Act 1917, p. 630.

This Act consists of a single section amending 3 separate sections of the General Code of 1910.

OKLAHOMA.**Chapter 53.****OIL AND GAS.****ARTICLE I.****GAS PIPE LINES.****4290. Gas Corporations.**

Any firm, copartnership association, or combination of individuals may become a body corporate under the laws of this State, for the purpose of producing, transmitting, or transporting natural gas to points within this state by complying with the general corporation laws of the State of Oklahoma, and with this article.

4291. Gas to Be Kept within State.

No corporation organized for the purpose of, or engaged in the transportation or transmission of natural gas within this State shall be granted a charter or right of eminent domain, or right to use the highways of this State, unless it shall be expressly stipulated in such charter that it shall only transport or transmit natural gas through its pipe lines to points within this State; that it shall not connect with, transport to, or deliver natural gas to individuals, associations, co-partnerships, companies or corporations engaged in transporting or furnishing natural gas to points, places or persons outside of this State.

4292. Foreign Gas Pipe Lines Shall Not Be Licensed.

Foreign corporations formed for the purpose of, or engaged in the business of transporting or transmitting natural gas by means of pipe lines, shall never be licensed or permitted to conduct such business within this State.

4293. Pipe Line Companies Must Comply with This Article.

No association, combination, copartnership or corporation shall have or exercise the right of eminent domain within this State for the purpose of constructing or maintaining a gas pipe line within this State, or shall be permitted to take private or public property for their use within this State, unless expressly granted such power in accordance with this article.

4294. Right of Way Must Be Granted and Damages Paid.

The laying, constructing, building and maintaining a gas pipe line for the transportation or transmission of natural gas along over, under, across or through the highways, roads, bridges, streets, or alleys in this State, or of any county, city, municipal corporation or any other private or public premises within this State is hereby declared an additional burden upon said highway, bridge, road, street or alley, and any other private, or public premises, and may only be done when the right is granted by express charter from the State; and such gas pipe line shall not be constructed, maintained, or operated until all damages to adjacent owners are ascertained and paid as provided by law.

4295. Inspection.

All pipe lines for the transportation or transmission of natural gas in this State shall be laid under the direction and inspection of proper persons, skilled in such business, to be designated by the chief mine inspector for such duty, and the expenses of such inspection and supervision shall be borne and paid for by the parties laying and constructing such pipe lines for the transportation or transmission of natural gas.

4296. Pressure Pumps Prohibited.

No pipe line for the transportation or transmission of natural gas shall be subjected to a greater pressure than three hundred pounds to the square inch, except for the purpose of testing such lines, and gas pumps shall not be used on any gas pipe line for

the transportation or transmission of natural gas or used on or in any gas well within this State.

4297. Transporting Out of State—Proceedings and Penalty.

Any corporation granted the right under the provisions of this article to exercise the right of eminent domain, or use the highways of this State to construct or maintain a gas pipe line for the transportation or transmission of natural gas to points within this State, which shall transport or transmit any natural gas to a point outside of, or beyond this State, or shall connect with or attempt to connect with or threaten to connect with any gas pipe line furnishing, transporting, or transmitting gas to a point outside of, or beyond this State, shall by each or all of said acts, forfeit all right granted it or them by charter from this State, and said forfeiture shall extend back to the time of the commission of said act or said acts in violation of this article; and said Acts shall of themselves work a forfeiture of any and all rights of any and every kind and character which may be or may have been granted by the State for the transportation or transmission of natural gas within this State, and all the property of said corporation and all the property at any time belonging to said corporation, at any time used in the construction, maintaining or operation of said gas pipe line or lines shall, in due course of law, be forfeited to and be taken into the possession of the State through its proper officer and in said action there shall be a right in the State to the appointment of a receiver, either before or after the judgment, to be exercised at the option of the State, and the officer taking possession of said property shall immediately disconnect said pipe line or lines at a proper point in this State from any pipe line or lines going out of, or beyond the State.

NOTE.—This section has been declared unconstitutional and also repealed by legislation. *Stewart v. Tennant*, 52 W. Va. 559; 44 S. W. 223. *McNeeley v. South Penn Oil Co.* 52 W. Va. 639, 44 S. E. 508.

There have been repeated efforts by more than one State to prohibit directly or indirectly the transportation of natural gas

beyond the limits of the State where produced. Such statutes have of course been declared void because of their interference with the Interstate power of Congress. *Kansas Natural Gas Co. v. Haskell*, 172 Fed. 545. Aff'd 221 U. S. 229, 55 L. ed. 221, 31 Sup. Ct. Rep. 564.

But this Oklahoma Act goes far beyond what had been attempted before. It not only revokes the charter of any corporation attempting to export the gas but attempts by drastic procedure to forfeit for such violation the property of the offending corporation.

A smiliar act of West Virginia was protested by the Legislature of Pennsylvania. See page 785.

4298. Same—Sale of Property—Revocation of Charter.

Said property shall be sold as directed by the Court having jurisdiction of said proceedings, and the proceeds of said sale shall be applied, first to the payment of the cost of such proceeding, and the remainder, if any, paid into the school fund of the State, and said charter under which said act or acts were committed shall be revoked, and no charter for the transportation or transmission of natural gas shall never (ever) be granted to any corporation having among its stockholders any person who was one of the stockholders of said corporation whose charter has or may have been forfeited as aforesaid; and if such charter shall have been granted, and thereafter a person shall become a stockholder thereof who was one of the stockholders of the corporation whose charter has been or may have been forfeited, as herein provided, the charter of said corporation, one of whose stockholders is as last named shall therefore be forfeited and revoked: Provided, that any person who may be denied the right to become a stockholder as above prescribed may be granted the right to become such stockholder by the corporation commission when such person shows to the commission that he was not a party to the former violations of this article.

4299. Lines over Private Property.

No pipe lines for the transportation or transmission of natural

gas shall be laid upon private or public property when the purpose of such line is to transport or transmit gas for sale to the public until the same is properly inspected as provided in this article; and before any gas pipe line company shall furnish or sell to the public, it shall secure from the inspector a certificate showing that said line is laid and constructed in accordance with this article, and under the inspection of the proper officer: Provided, that nothing in this article shall be construed to prevent persons drilling for oil and gas from laying surface lines to transport or transmit gas to wells which are being drilled within this State; and Provided, further, that factories in this State may transport or transmit gas through pipe lines for their own use for factories located wholly within this State, upon securing the right of way from the State over or along the highway and from property owners to their lands.

4300. Corporations Become Domestic.

No person, firm, association, or corporation shall ever be permitted to transmit or transport natural gas by pipe lines in this State or in this State construct or operate a pipe line for the transmission of natural gas, except such persons, firms, associations or corporations be incorporated as in this article provided, except as provided in the preceding section.

4301. Information to Be Furnished Commission.

Before any gas pipe line corporation shall acquire any right of way, or exercise the right of eminent domain within this State, or construct any pipe lines for the transportation of gas, it shall file in the office of the corporation commission a plat showing in detail the points in this State, between which and the route along which its trunk line is proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections of all kinds on said trunk lines; and upon the demand of the corporation commission it shall file a plat showing in detail all the lines owned or operated by it, with full information as to their capacity and size, location and capacity of

its pumping station, gate valves, check valves and connections of all kinds in existence.

4302. Domestic Pipe Line Companies May Erect Pumping Stations.

All domestic gas pipe line corporations in this State are hereby authorized to build and operate, and for that purpose to acquire, whether by purchase or the exercise of eminent domain, sites for the erection of pumping stations in this State wherever the same may be necessary, due consideration being had for the size, capacity, pressure, facilities and powers of all other gas pipe line corporations and gas consumers and gas producers, in the same gas district which may be affected by the use of said pumps.

4303. Domestic Pipe Line Companies May Cross Highways.

Every domestic gas pipe line corporation in this State is hereby given authority to build, construct and maintain gas pipe lines, over, under, across or through all highways, bridges, streets or alleys in this State, or any public place therein, under the supervision of the inspector of oil and gas as to where and how in said highways, bridges, streets, alleys and public places said pipe line shall be laid, subject to the control of the local municipalities as to how the business of distribution in that municipality shall be conducted, and subject to responsibility as otherwise provided by law: Provided, however that whenever any gas pipe line crosses the land or premises of any one outside of a municipality, said corporation shall, upon request of the owner of said premises, connect said premises with a pipe line and furnish gas to said consumer at the same rate as charged in the nearest city or town.

ARTICLE II.

OIL PIPE LINES.

4304. Oil Companies Must Comply with This Article—Penalty.

Every corporation, joint stock company, partnership or other

person, exercising or claiming the right to carry or transport crude oil or petroleum, or any of the products thereof, by or through pipe lines, for hire or otherwise, or exercising or claiming the right to engage in the business of producing crude oil or petroleum, or of refining it, or manufacturing any of the products thereof, or of storing crude oil or petroleum produced by it, or any other person, or engaging in the business of buying, selling or dealing in crude oil or petroleum, within the limits of this State, shall not have or possess the right to conduct or engage in said business or operation, in whole or in part, as above described, or have or possess the right to locate, maintain or operate the necessary pipe lines, fixtures and equipment thereunto belonging, or used in connection therewith, concerning the said business of carrying or transporting crude oil or petroleum as aforesaid, on, over, along, across, through, in or under any present or future highway, or part thereof, within this State, or have or possess the right of eminent domain or any other rights, concerning said business or operations, in whole or in part, except as authorized by and subject to the provisions of this article, and except such rights as may already exist which are valid, vested, and incapable of revocation by any law of this State or the laws of the United States. The word "petroleum" as used herein means all crude oil and its manufactured products, not including natural gas.

4305. Right of Way.

For the purpose of acquiring necessary right of way, every such person is hereby granted the right of condemnation by eminent domain, and the use of the highways in this State, for the purpose of transporting petroleum by pipe lines, and the location, laying, construction, maintaining and operation thereof.

4306. Foreign Corporations.

Corporations of other States or Territories, or of the United States, otherwise admissible to do business in this State may get the benefit of this article upon compliance with the laws and

constitution of this State, including the provisions of Section 31, of Article IX, of the Constitution, but until such compliance they shall have no right in, on or under the highways.

4307. Common Purchasers of Oil—Required to Purchase.

Every corporation, joint stock company, partnership or other person, claiming or exercising the rights to carry or transport crude oil or petroleum or any of the products thereof, by pipe line for hire or otherwise, within the limits of this State, as allowed by, and upon compliance with the requirements of this article, as owner, lessee, licensee, or by virtue of any other right or claim, which is engaged in the business of purchasing crude oil or petroleum therein shall be deemed a common purchaser thereof and shall purchase all of the petroleum in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in favor of one producer or one person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or shall be legally excusable from purchasing and transporting all of the petroleum produced, then it shall purchase and transport petroleum from each person and producer ratably, in proportion to the average daily production; and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of oil, or facilities as between producers or persons; and in the event such purchaser is likewise a producer, it is hereby prohibited from discriminating in favor of its own production, or storage, or production or storage in which it may be interested, directly or indirectly in whole or in part, and its own production and storage shall be treated as that of any other person or producer.

4308. Same—Exceptions.

All persons, firms, associations and corporations are exempt from the provisions of this article where the nature and extent of their business are such that the public needs no use in the same and the conduct of the same is not a matter of public concern.

sequence and for this purpose the district courts of the State and the corporation commission are vested with jurisdiction to determine such exemptions in any action or proceedings properly before them, as provided in this article.

4309. Oil Carriers Are Common Carriers—Discrimination Prohibited.

Every corporation, joint stock company, partnership or person engaged in the business of carrying or transporting crude oil or petroleum or any of the products thereof for hire or otherwise, by pipe line, within this State, and by virtue of and in conformity to any valid law incapable of revocation by any laws of this State or of the United States, or by virtue of and in conformity to the provisions of this article, shall be deemed a common carrier thereof as at common law; and no such common carrier shall allow or be guilty of any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage or delivery of any crude stock or storage oil, or any product thereof, in its possession or control, or in which it may be interested, directly or indirectly.

4310. Oil Carriers Not to Be Interested in Producing.

It shall be unlawful for any corporation, joint stock company, partnership or person engaged in the business of carrying or transporting crude oil or petroleum, or any of the products thereof, for hire or otherwise, within the limits of this article, and not becoming a common purchaser as defined by, and accepting the provisions of this article, to own or operate, directly or indirectly, any oil well, oil leases or oil holdings or interests in this State, and each of said corporations, joint stock companies, partnerships or persons shall divest themselves of all legal or equitable ownership, interest or control, directly or indirectly, in oil wells, oil leases or oil holdings or interests in this State.

4311. Acceptance of Laws and Plats to Be Filed.

Before any corporation, joint stock company, partnership or person shall have, possess, enjoy or exercise the right of eminent

domain, right of way, right to locate, maintain or operate pipe lines, fixtures or equipment thereunto belonging, or used in connection therewith, as authorized by the provisions of this article, or shall have, possess, enjoy or exercise any right (the word "right" in this connection being used in its most comprehensive legal sense) conferred by this article, every such corporation, joint stock company, partnership or other person shall file in the office of the corporation commission a proper and explicit authorized acceptance of the provisions of this article and the constitution of this State, and, in cases of pipe lines, a plat showing in detail the points within this State between which, and the route along which, the trunk lines are proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections and appliances of all kinds used, or to be used, on said trunk lines; and upon demand of the corporation commission, the proper parties, as required by said commission, shall promptly file a plat showing in detail all the lines owned and operated by them respectively, with full and explicit information as to their capacity, size and location, and the capacity of their pumping stations, gates valves, check valves and connections, of all kinds, required or used in the operation thereof.

4312. Domestic Pipe Line Companies Have Right of Way.

Every domestic pipe line company in this State is hereby given authority to build, construct, lay and maintain oil pipe lines over, under, across or through all highways, bridges, streets or alleys in this State, or any public place therein, under the supervision of the inspector of oil and gas wells and pipe lines as to where and how in said highways, bridges, streets, alley and public places said pipe lines shall be laid, and subject to the control of the local municipalities, as to how the business of distribution in that municipality shall be conducted, and subject to responsibility as provided by law for any negligent injury thereby caused.

4313. Who May Have Right of Eminent Domain.

All persons, natural or artificial, except foreign corporations,

shall have the right of eminent domain, and any right or privilege hereby conferred, when necessary to make effective the purposes of this article and the rights thereby conferred. Foreign corporations organized under the laws of any other state, or the United States, and doing or proposing to do business in this State, and which shall have become a body corporate pursuant to or in accordance with the laws of this State, and which, as hereby provided, shall have registered its acceptance of the terms thereof, shall receive all the benefits provided by this article.

4314. Commission May Extend Time.

Upon a sworn statement of the necessities which would justify a judicial continuance, the corporation commission is authorized to extend the time for the filing of the said plats, not, however, to exceed sixty days.

4315. Penalty for Violations.

Any person, copartnership or corporation, its agent or employee, violating any of the provisions of this article or any order of the competent courts of this State, or the corporation commission, pursuant to the jurisdiction conferred by this article, shall upon conviction thereof, be fined a sum of not less than one thousand dollars, nor more than five thousand dollars, or imprisonment for not less than six months, nor more than one year, or by both such fine and imprisonment for each and every violation of this article; but in case the monthly runs or takings or transportation of oil shall average so as to be without discrimination, as herein provided, the transactions of any particular day, week or portion of a month shall be disregarded; and the competent Court of the county in which the omission or commission which is a violation of this article has occurred shall have jurisdiction of an action under the penal code for the punishment thereof; and said penalties shall not be exclusive of civil liability.

4316. Suspension of Penalty, When.

Whenever the operation of a valid order of a competent court

or the corporation commission is duly suspended according to law, the punitive provisions of this article shall likewise be suspended in their operation as to the transaction adjudicated in said court; and further, any Court having jurisdiction of an action brought by the State to punish for a violation under the terms of this article, shall not impose a punishment therefor greater than five hundred dollars against any person or corporation, if it finds from the evidence that the violation was made solely with the object of testing according to law the validity of any of the provisions of this article, or of the order of any competent Court or of the corporation commission, in any proceeding to carry out the provisions hereof.

4317. Certified Transcript Shall Be Evidence.

A properly certified transcript of the report of any such corporation, association or person shall, as against the maker thereof, be prima facie evidence of the truth of any matter therein contained.

4318. Commission May Extend Time for Operation of Law.

For good cause shown, the corporation commission is authorized to extend the time within which this article shall operate as to any particular corporation, association or person, not to exceed nine months after the same becomes effective.

PURCHASE OF GAS FROM FOREIGN CORPORATIONS

An Act permitting gas pipe line corporations and all municipal corporations to contract with and purchase from foreign corporations or interstate pipe line companies, the supply of gas for their lines; and permitting the selling of natural gas for said purposes by interstate pipe line companies.

Gas from Interstate Pipe Lines—License from Corporation Commission.

SECTION 1. All domestic gas pipe line corporations in this State, which are now, or shall hereafter fully comply with the

laws of this State, and all municipal corporations, owning or operating a gas plant, or which may hereafter own or operate a gas plant, may contract with and secure from foreign corporations, operating interstate gas pipe lines, the supply of gas for said domestic gas companies. And interstate gas pipe line companies or foreign corporations may enter into said contract and deliver said gas, upon obtaining a license from the corporation commission, which is hereby authorized to grant a license to do and transact that particular business of supplying domestic corporations with natural gas, and the taking out of said license and the conduct of said business with domestic pipe line companies, shall not prejudice the said interstate pipe line companies, or foreign corporations in the transaction and conducting of their interstate business; provided, the corporation commission may revoke said license when, in its discretion, the public interest may be best subserved thereby. (Ch. 98, Session Laws 1913.)

Foreign and Domestic Corporations to Have Separate Ownership.

SEC. 2. No person or corporation, interested or doing business as an interstate gas pipe line company shall be interested in or own or control any stock of a domestic corporation, purchasing gas from an interstate pipe line company. *Id.*

ACT REGULATING CARRIAGE OF GAS

An Act to regulate corporations, associations, and persons engaged in this State, in the business of carrying natural gas through pipe lines; to regulate operators of gas wells, regulating the purchase of natural gas by pipe lines, providing for violations thereof, conferring jurisdiction in the corporation commission for enforcement of the provisions of this Act, and declaring an emergency.

Businesses and Persons Subject to the Act—Vested Rights Excepted.

SECTION 1. Every corporation, joint stock company, limited

copartnership, partnership or other person, now or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines, for hire, compensation or otherwise, or now or hereafter exercising or claiming the right to engage in the business of producing, piping or transporting natural gas, or any other person or persons, now or hereafter engaging in the business of buying, selling in or transporting natural gas within the limits of this state, shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures and equipment thereto belonging, or use in connection therewith, concerning the said business of carrying or transporting natural gas as aforesaid, on, over, along, across, through, in or under any present or future highway, or part thereof, within the State, or to have or possess the right of eminent domain or any other right or rights, concerning said business or operation, in whole or in part, except as authorized by and subject to the provisions of this act, except, further, and only such right or rights as may already exist which are valid, vested, and incapable of revocation by any law of this State or of the United States. Act of March 26, 1913, chap. 99.

Pipe Line Right-of-Way—Eminent Domain—Highways.

SEC. 2. For the purpose of acquiring necessary right of way, every such person is hereby granted the right of condemnation by eminent domain, and in the use of the highways in this state, for the purpose of transporting natural gas by pipe lines, and the location, laying, constructing, maintaining and operations thereof.

Pipe Line Operators Common Purchasers—Requirements—Exemptions.

SEC. 3. Every corporation, joint stock company, limited copartnership or other person, now or hereafter claiming or exercising the right to carry or transport natural gas by pipe line or pipe lines, for hire, compensation, or otherwise, within the lim-

its of this State, is allowed by, and upon compliance with the requirements of this act, as owner, lessee, licensee, or by virtue of any other right or claim, which is now engaged or hereafter shall engage in the business of purchasing natural gas shall be a common purchaser thereof, and shall purchase all the natural gas in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in favor of one producer or one person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or be legally excused from purchasing and transporting all the natural gas produced or offered, then it shall purchase and transport natural gas from each person or producer ratably, in proportion to the average production, and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of natural gas or facilities as between producers or persons; and in the event it is likewise a producer, it is hereby prohibited from discrimination in favor of its own production, or production in which it may be interested directly or indirectly in whole or in part, and its own production shall be treated as that of any other person or producer. All persons, firms, associations, and corporations are exempted from the provisions of this act, except from the provisions of section nine (9) hereof, where the nature and extent of their business is such that the public needs no use in the same, and the conduct of the same is not a matter of public consequence, and for this purpose the district courts of the state and the Corporation Commission are hereby vested with jurisdiction to determine such exemptions in any action or proceeding properly before them, and provided by the laws now in force in this State regulating the purchase and transportation of oil.

Pipe Line Operators to be Common Carriers—Obligations—Exemptions.

SEC. 4. Every corporation, joint stock company, limited co-partnership, partnership or other person, now or hereafter engaged in the business of carrying or transporting natural gas for hire, for compensation or otherwise, by pipe lines, within this

State, and by virtue of and in conformity to, any valid law incapable of revocation by any law of this State or of the United States, or by virtue of and in conformity to the provisions of this Act, shall be a common carrier thereof as at common law, and no such common carrier shall allow or be guilty of any unjust or any unlawful discrimination, directly or indirectly, in favor of the carriage, transportation or delivery of any natural gas, offered to it, in its possession or control, or in which it may be interested, directly or indirectly. Provided, that any municipality now owning or operating a gas pipe line for the purpose of furnishing gas for said municipality and now under contract with any person, firm or corporation to furnish it gas, shall be exempted from the provisions of this section during the life of said contract, or until changed or abrogated by the parties thereto. And, provided further, that any person, firm or corporation owning or operating a gas pipe line within the limits of any incorporated city, or town in this State shall be exempted from the provisions of this section only as to its distributing lines located wholly within the corporate limits of said city or town.

Non-Compliance with Act Made Unlawful—Effect.

SEC. 5. It shall be unlawful for any corporation, joint stock company, limited copartnership, partnership or other person, now or hereafter engaged in the business of carrying or transporting natural gas for hire or compensation or otherwise, within the limits of this Act and not becoming a common purchaser as defined by, and accepting the provisions of this Act, to own or operate, directly or indirectly, any gas well or wells, gas leases, or gas holdings or interests in this state, after six months next after the approval of this act, and each and every of said corporations, joint stock company, limited copartnership, partnership or other persons shall divest themselves of all legal or equitable ownership, interest or control, directly or indirectly, in gas well or wells, gas leases or gas holdings or interests in this State.

Prerequisite to Carrying Gas—Records for Corporation Commission.

SEC. 6. Before any corporation, joint stock company, limited copartnership, partnership or other persons shall have, possess, enjoy or exercise the right of eminent domain, right-of-way, right to locate, maintain or operate pipe lines, fixtures or equipment thereunto belonging, or used in connection therewith, as authorized by the provisions of this Act, or shall have, possess, enjoy or exercise any right (the word "right" in this connection being used in its most comprehensive legal sense) conferred by this Act, every such corporation, joint stock company, limited copartnership, partnership or other person, shall file in the office of said Corporation Commission proper and explicit authorized acceptance of the provisions of this Act and the Constitution of this State, in cases of pipe lines a plat showing in detail the points within this state between which, and the route along which the trunk lines are proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections and appliances of all kinds used, or to be used, on said trunk or lines; and upon demand of the Corporation Commission the proper party or parties, as required by said commission, shall properly file a plat showing in detail all the lines owned and operated by them respectively, with full and explicit information as to their capacity, size and location, and the capacity of their pumping station, gate valves, check valves and connections of all kinds, respectively, required or used in the operation thereof.

Right-of-Way—Highways—Eminent Domain.

SEC. 7. Every domestic pipe line company in this State is hereby given authority to build, construct, lay and maintain gas pipe lines, over, under, across, or through all highways, bridges, streets or alleys in this State or any public place under the supervision of the Corporation Commission as to where and how in said highways, bridges, streets, alleys and public places said pipe lines shall be laid. Provided the right to lay gas pipe lines

in cities shall be acquired as now provided by law, and subject to the responsibility as otherwise provided by law for any negligent injury thereby caused. All persons, natural or artificial, except foreign corporations, shall have the right of eminent domain, and any right or privilege hereby conferred, when necessary to make effective the purposes of this act and the rights thereby conferred. Foreign corporations organized under the laws of any other State or Territory, or the United States, and doing or proposing to do business in this State, and which shall have become a body corporate pursuant to or in accordance with the laws of this State, and which, as hereby provided, shall have registered its acceptance of the terms hereof, shall receive all the benefits by this act provided.

Filing Records with Corporation Commission—Extension of Time.

SEC. 8. Upon a sworn statement of the necessities which would justify a judicial continuance, the Corporation Commission is authorized to extend the time for the filing of the said plats, not, however, to exceed 60 days.

Only 25 Per Cent of Capacity of Gas Wells to Be Taken.

SEC. 9. Every corporation, joint stock company, limited co-partnership or other person, now or hereafter claiming or exercising the right to produce natural gas, or to carry or to transport natural gas through pipe line or pipe lines, for hire, compensation, or otherwise within the limits of this state, is allowed by, and upon compliance with the requirements of this act, as owner, lessee, licensee, or by virtue of any other right or claim, is hereby prohibited from taking more than twenty-five (25) per cent of the daily natural flow of any gas well or wells unless for good cause shown, under the exigencies of the particular case the Corporation Commission shall establish a different per centum under the prescribed rules and regulations therefor.

Meters—Requirements.

SEC. 10. No corporation, joint stock company, limited copart-

nership, partnership or person doing business under the provisions of this act shall purchase, collect, transport, convey or sell any gas from any wells in this State except such gas as is run through properly constructed meters, the daily readings of which shall be carefully and accurately taken every twenty-four hours (24), and of which a true and correct report under oath shall be made every month and which report of all such business transacted during the next preceding month shall be filed not later than the fifteenth (15th) day of each and every month with the Corporation Commission and which report shall at all times be open to the inspection of the public. Such report shall be based upon such daily meter readings; shall show the amount of gas run or purchased from each tract of lands; lease or leasehold estate, the names of the seller or sellers of such gas and of the purchaser or purchasers thereof; and any person or persons making or directing, counseling, advising, aiding or abetting in the making or filing of any false report in the premises shall be deemed guilty of perjury, and on conviction thereof be punished as provided by law; and to the end that such meters shall be properly constructed, maintained, repaired and operated, their installation, use and operation shall at all times be subject to such rules and regulations as the Corporation Commission may prescribe.

Violation of Act—Punishment.

SEC. 11. Any person, copartnership, or corporation, its agent or employees, violating any of the provisions of this Act, or any order of a Court of Competent Jurisdiction of this State, or the Corporation Commission, pursuant to the jurisdiction conferred by this act, shall, upon conviction thereof be fined a sum of not less than one thousand (\$1,000.00) nor more than five thousand (\$5,000.00), or imprisonment not less than six months, nor more than one year, or by both such fine and imprisonment for each and every violation of this act; but in case the monthly runs or takings or transportation of gas shall average so as to be without discrimination, as herein provided, a transaction or transactions of any particular day or week or portion of a month shall be disregarded; and the court of competent jurisdiction

of the county in which the omission or commission, which is in violation of this act, has occurred, shall have jurisdiction of an action under the Penal Code for the punishment thereof; and that said penalties shall not be exclusive of civil liability.

Violations—Receivership—Procedure.

SEC. 12. The Corporation Commission shall, upon being reasonably satisfied that any corporation has violated the provisions of this act, recommend to the Attorney General that a receiver be appointed for such corporation. Upon receipt of the recommendation by the Attorney General, he shall within ten days file a petition on behalf of the State in any Court of competent jurisdiction, praying that a receiver be appointed, and such court shall immediately consider the application and appoint a receiver, if in the judgment of the Court the provisions of this Act have been willfully violated. The receiver, when appointed, shall immediately take charge of all the business, property and assets of such corporation in the State and shall retain possession thereof until it shall be determined upon the trial whether or not such corporation has violated the provisions of this Act, then, in addition to the other penalties herein provided, all the property of said corporation shall be retained under such receivership until the penalties incurred hereunder are paid, after which the receivership may be discharged upon such terms and conditions as the Court may impose as an assurance for the further compliance with this Act.

Evidence—Reports of Gas Companies.

SEC. 13. A properly certified transcript of the report of any such corporation, association, or person, shall, as against the makers thereof, be prima facie evidence of the truth of any matter therein contained.

Enforcement by Corporation Commission—Appeals.

SEC. 14. The Corporation Commission is hereby authorized and empowered to enforce all the provisions of this Act, including the employment of requisite help and gas experts to carry

out the same, except when jurisdiction is conferred on some other branch of the State government by the Constitution of this State; appeals may be allowed from the decision of the Commission to the Supreme Court as now provided by law for appeals in other cases.

Extension of Time for Operation of Act.

SEC. 15. For good cause shown, the Corporation Commission is authorized to extend the time within which this Act shall operate as to any particular corporation, association or person not to exceed nine months after the same became effective.

WASTE, PLUGGING AND INSPECTION

4832. Waste. Oil Wells and Gas Wells Distinguished.

Any person, copartnership, or corporation in possession, either as owner, lessee, agent or manager of any well producing natural gas, in this State in order to prevent the said gas wasting by escape, shall immediately after this Act takes effect, and immediately after penetrating the gas-bearing rock, in any well hereafter drilled, shut in and confine the gas in said well until and during such time as the gas therein shall be utilized for lights, fuel or power purposes: *Provided*, This shall not apply to any well operated for oil; *provided, also*, that when in the course of drilling gas production is developed, four days' free time shall be allowed in which to determine whether the well shall be shut and saved for a gas well or drilled in further for the purpose of producing oil. (L. 1909, H. B. 238. Took effect March 27, 1909.)

4833. Unnecessary Leaks.

It shall be unlawful for any person, copartnership, or corporation, either as owner, lessee, agent or manager of any pipe line in this State, through which natural gas flows from wells utilized for the production of gas only, to allow any unnecessary leak or waste to occur from said line. (L. 1909, H. B. 238. Took effect March 27, 1909.)

4834. Jumbo and Flambeau Lights.

It shall be unlawful to use natural gas for illuminating purposes in what are known as flambeau lights; but nothing herein shall prohibit the use of "Jumbo" burners or other burners in glass globes consuming no more gas than such "Jumbo" burners, nor the burning of flambeau lights not to exceed four in number within or near the derrick of any drilling well. (L. 1909, H. B. 238. Took effect March 27, 1909.)

4835. Gas Light Curfew.

The person, persons, firm, company or corporations consuming said gas, and using burners in open air or in or around derricks shall turn off said gas not later than eight o'clock in the morning of each day such lights or burners are used, and shall not turn on or relight the same between the hours of eight o'clock a. m. and five o'clock p. m. (L. 1909, H. B. 238. Took effect March 27, 1909.)

4836. Daylight Use of Gas.

No gas shall be used or burned for illuminating purposes between the hours of eight o'clock a. m., and five o'clock p. m., unless the use of the same is regulated by meter. (L. 1909, H. B. 238. Took effect March 27, 1909.)

4837. Streams to Be Protected. Salt Water.

No inflammable product from any oil or gas well shall be permitted to run into any tank, pool, or stream used for watering stock; and all waste of oil and refuse from tanks or wells shall be drained into proper receptacles at a safe distance from the tanks, wells or buildings, and be immediately burned or transported from the premises, and in no case shall it be permitted to flow over the land. Salt water shall not be negligently allowed to flow over the surface of the land. (L. 1909, H. B. 238. Took effect March 27, 1909.)

4838. Abandoned Wells How Plugged.

All lessees or operators drilling or operating for crude oil

or natural gas within the State of Oklahoma shall immediately in a practical and workmanlike manner under the supervision of the oil and gas inspector, as hereinafter provided, plug all dry or abandoned oil and gas wells in which oil or gas-bearing stratum has been found in the following manner: Beginning at the bottom of the hole, same shall be solidly filled with crushed rock or sand pumpings, or both, to a point twenty-five feet above the top level of the oil or gas-bearing sand; at that point a wooden plug of seasoned pine two feet in length and not less than one-half inch in diameter less than the inside diameter of the hole at that point shall be placed; thereafter the hole shall be filled up solidly twenty-five feet farther with a substance consisting of one-third portion of cement and two-thirds portion of sand, properly mixed with water; thereafter, another wooden plug of seasoned pine two feet in length and not less than one-half inch in diameter less than the inside diameter of the hole at the point shall be placed; thereafter the hole shall be filled up solidly twenty-five feet further with crushed rock and said sand pumpings, or both; and, *Provided, further*, that all such wells drilled to the Mississippi Line shall be plugged above the Mississippi Line in the same manner as provided for herein above, as to the plugging of wells in the upper oil and gas-bearing stratum, all abandoned wells shall immediately be closed and marked, and, *Provided, further*, that when any such lessee or operator removes the derrick from and around such wells, he shall plug such wells in some good and substantial manner, at least ten feet below the surface and fill such well from that point to the surface with such material as will prevent the well from caving before final abandonment. (L. 1909, H. B. 238. Took effect March 27, 1909.)

4839. Chief Mine Inspector and Deputies of Oil and Gas.—Duties.

The chief mine inspector shall appoint, subject to removal by him, such deputies of practical experience in operating and drilling oil and gas wells, and who are not directly or indirectly interested in the production of oil or gas as may be necessary to the full and prompt performance of the duties required by law.

The chief inspector or his deputies shall personally supervise the using and operating of natural gas in this State, and the proper observance of the laws of the State dealing with the drilling for and production of oil and gas, or the piping, storage, purchase and use thereof in this State, and shall promptly report any violation of such laws of (to) the county attorney of the county in which such violation may occur. Said chief mine inspector shall designate one of his deputies to be chief deputy inspector of oil and gas wells and pipe lines, and all duly appointed deputies shall reside at places convenient for the performance of their duties, and a record of their residence shall be kept on file in the office of the chief mine inspector, and be open to the inspection of all persons interested.

The chief deputy inspector of oil and gas wells and pipe lines shall receive a compensation not to exceed two thousand (\$2,000) dollars per annum and necessary traveling and maintenance expenses while absent from home in the performance of their duties. (As amended May 17, 1913, Acts 1913, p. 459.)

4840. Inspector or Deputy to Supervise Plugging.

Whenever it becomes necessary to plug any well as required by law, the lessee or operator thereof shall at once notify, in writing, the inspector of gas and oil wells at the office of the Chief Mine Inspector or by personal written notification to the inspector of gas and oil wells at his residence, whereupon said inspector, or his deputy, shall repair to said well and supervise the plugging thereof. (L. 1909, H. B. 238. Took effect March 27, 1909.)

4841. Owner to Furnish Log to Inspector.

Upon the arrival of said inspector, or his deputy, at the well to be plugged, the lessee or operator thereof shall furnish the inspector a record of the drilling of said well verified under oath, showing a true and correct log of the well. (L. 1909, H. B. 238. Took effect March 27, 1909.)

4842. Setting Fires. Interference with Pipes.

It is hereby declared to be unlawful for any person or persons maliciously to set fire to any gas or oil escaping from wells, broken or leaking mains, pipes, valves, tanks or other appliances, used by any person, company or corporation in conveying gas or oil, or to interfere in any manner with the wells, pipes, mains, gate boxes, valves, stop-cocks, or other appliances, machinery or property of any person, company, or corporation engaged in furnishing gas or oil unless employed by or acting under the authority and direction of any such person, company or corporation owning or operating said gas or oil lines or the proper legal authorities. (L. 1909, H. B. 238. Took effect March 27, 1909.)

4843. Penalties imposed.

Any person, copartnership, or corporation violating any of the provisions of this Act, shall upon conviction thereof, be fined in any sum not less than twenty-five dollars, nor more than five hundred dollars, in any court having competent jurisdiction in the county in which the Act shall have been committed or omitted, or by being imprisoned for not less than thirty days nor more than ninety days, or by both such fine and imprisonment. The amount of said penalty, when collected shall be paid one-half into the public road fund, of the county in which said suit shall have been brought, and one-half to the informer in said action. (L. 1909, H. B. 238. Took effect March 27, 1909.)

The Act of 1905 p. 309 as to plugging and waste of gas seems to be superseded by the later Act below printed.

ACT AS TO OWNERSHIP OF GAS

An Act defining ownership of natural gas, providing for the taking of same and making it larceny to take natural gas except as herein provided.

Surface Owners Own the Gas.

SECTION 1. All natural gas under the surface of any land in this State is hereby declared to be and is the property of the

owners, or gas lessees, of the surface under which gas is located in its original State. Act May 16, 1913, p. 439.

Attempt to Equalize Division of Product.

SEC. 2. Any owner, or oil and gas lessee, of the surface having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the corporation commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well. *Id.*

Corporation Commission to Divide among Gas Owners.

SEC. 3. Any person, firm or corporation taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the corporation commission after notice and hearing; provided That each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas. *Id.*

Excess Share of Gas.

Sec. 4. Any person, firm or corporation taking more than his or its proportionate share of such gas, in violation of the provisions of this Act, shall be liable to any adjoining well owner for all damages sustained thereby and subject to a penalty for each violation not to exceed five hundred dollars (\$500), and each day such violation is continued shall be a separate offense. *Id.*

Violations Made Penitentiary Offense.

Sec. 5. Any person or agent of a corporation who takes gas, or aids or abets in the taking of gas, except as herein provided, either directly or indirectly, as an individual, officer, agent or employee of any corporation shall be guilty of grand larceny and upon conviction thereof, shall be sentenced to the penitentiary not to exceed five (5) years. *Id.*

ACT TO PREVENT WASTE

An Act to conserve natural gas in the State of Oklahoma, to prevent waste thereof, providing for the equitable taking and purchase of same, conferring authority on the Corporation Commission, prescribing a penalty for violation of this Act, repealing certain Acts, and declaring an emergency.

Implied Waste of Gas.

That the production of natural gas in the State of Oklahoma, in such manner, and under such conditions as to constitute waste, shall be unlawful. Sec. 1, Act 1915, p. 326.

Enlarged Definition of Waste.

That the term waste, as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural

gas well to wastefully burn and the wasteful utilization of such gas. Sec. 2. *Id.*

Conservation of Gas under Corporation Commission.

That whenever natural gas in commercial quantities or a gas bearing stratum, known to contain natural gas in such quantity, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. Any unrestricted flow of natural gas in excess of two million cubic feet per twenty-four hours shall be considered a commercial quantity thereof; provided, that if in the opinion of the corporation Commission, gas of a lesser quantity shall be of commercial value, said Commission shall have authority to require the conservation of said gas in accordance with the provisions of this Act; and provided, further, the gauge of the capacity of any gas well shall not be taken until such well has been allowed an open flow for the period of three days. Sec. 3, *Id.*

Power of Commission to Distribute Gas.

That whenever the full production from any common source of supply of natural gas in this State is in excess of the market demands, then any person, firm or corporation having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the corporation Commission may by proper order permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said Commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to

regulate the taking of natural gas from any or all such common sources of supply within the State, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. Sec. 4, *Id.*

Equitable Distribution to Common Purchasers.

Sec. 5. That every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this State, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines or gathering lines without discrimination in favor of one producer as against another or in favor of any one source of supply as against another, save as authorized by the corporation Commission after due notice and hearing; but if any such person, firm or corporation shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing from the duty of purchasing gas of an inferior quality or grade. Sec. 5, *Id.*

Judicial Power Conferred on Corporation Commission.

That any person, firm or corporation, or the Attorney General on behalf of the State may institute proceedings before the cor-

poration Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this Act; and jurisdiction is hereby conferred upon said Commission to hear and determine the same, said Commission shall set a time and place when such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers having general circulation in the State, and shall in addition thereto cause notice to be served in writing upon any person, firm or corporation, complained against in the manner now provided by law for serving summons in civil actions. In the exercise and enforcement of such jurisdiction said Commission is authorized to summon witnesses, make ancillary orders, and use such means and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations as now provided by law. Sec. 6, *Id.*

Review by Supreme Court.

That appellate jurisdiction is hereby conferred upon the Supreme Court of this State to review the orders of said Commission made under this Act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the corporation Commission. Said orders so appealed from may be superseded by the Commission or by the Supreme Court upon such terms and conditions as may be just and equitable. Sec. 7, *Id.*

Corporation Commission to Make Rules and Regulations.

Sec. 8. That the corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents with the consent of the Governor as may be necessary to enforce this Act. Sec. 8, *Id.*

Acceptance of Act to Be Filed.

Before any person, firm or corporation shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain or operate pipe lines, fixtures on, or equipments belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping or transporting natural gas as a public service or otherwise, such person, firm or corporation shall file in the office of the corporation Commission a proper and explicit authorized acceptance of the provisions of this Act. Sec. 9, *Id.*

Duties of Mine Inspector.

That nothing contained in this Act shall be construed to interfere with any duties now imposed by law upon the Chief Mine Inspector of the State or his deputies. Sec. 10, *Id.*

Separate Construction to the Several Sections.

Sec. 11. That the invalidity of any section, subdivision, clause or sentence of this Act, shall not in any manner affect the validity of the remaining portion thereof. Sec. 11, *Id.*

Penalties of Fine and Imprisonment.

Sec. 12. That in addition to any penalty that may be imposed by the corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this Act, shall be guilty of a misdemeanor, and upon conviction thereof, in a Court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars (\$5,000), or by imprisonment in the county jail, not to exceed thirty (30) days, or by both such fine and imprisonment. Sec. 12, *Id.*

PUBLIC UTILITIES ACT

Definition of Terms—"Public Utilities."

Section 1. The term "public utility," as used in this Act, shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, except cities, towns, or other bodies politic, that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public.

(a) For the conveyance of gas by pipe line.

(b) For the production, transmission, delivery or furnishing of heat or light with gas.

(c) For the production, transmission, delivery or furnishing electric current for light, heat or power.

(d) For the transportation, delivery or furnishing of water for domestic purposes or for power.

The term "Commission" shall be taken to mean corporation Commission of Oklahoma.

Commission's Jurisdiction over Public Utilities.

Sec. 2. The Commission shall have general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations, affecting their services, operation, and the management and conduct of their business; shall inquire into the management of the business thereof, and the method in which same is conducted. It shall have full visitorial and inquisitorial power to examine such public utilities, and keep informed as to their general conditions, their capitalization, rates, plants, equipments, apparatus, and other property owned, leased, controlled or operated, the value of same, the management, conduct, operation, practices and services; not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the provisions of this Act, and with the

Constitution and laws of this State, and with the orders of the Commission.

Implied Powers of Commission—Contempt.

Sec. 3. In addition to the powers enumerated, specified, mentioned or indicated in this Act, the Commission shall have all additional implied and incidental powers which may be proper and necessary to carry out, perform and execute all powers herein enumerated, specified, mentioned, or indicated, and to punish as for contempt such corporation, association, company or individual, their trustees, lessees, receivers, successors and assigns, for the disobedience of its orders in the manner provided for punishment of transportation and transmission companies, by the Constitution and laws of this State.

Records of Public Utility Business.

Sec. 4. In case of the owner or operator of any public utility is engaged in carrying on any other business in connection with the operation of such public utility, the Commission may require the cost of the operation and gross revenues of such joint business to be kept in such form and manner as may be prescribed by the Commission so that the cost of the operation and gross revenues of the public utility may be ascertained.

Orders of Commission—Scope—Right of Appeal.

Sec. 5. The Commission may, from time to time, adopt or promulgate, such orders, rules, regulations or requirements, relative to investigations, inspections, tests, audits, and valuations of the plants and properties relative to inspection and tests of meters as in its judgment may be necessary and proper; provided, that under the provisions of this Act, any public utility, corporation, association, company, individual, their trustees, lessees or receivers, successors, or assigns, may appeal from any order or finding or judgment of the Corporation Commission as provided by law in cases tried and heard before said Commission of transportation and transmission companies.

Emergency.

Sec. 6. For the preservation of the public health, peace and safety, an emergency is hereby declared to exist, by reason whereof this Act shall take effect and be in force from and after its passage and approval. (Ch. 93, Session Laws 1913.)

WASTE AND CORPORATION COMMISSION ACT**Waste of Oil Prohibited.**

Section 1. That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited. Acts of 1915, p. 28.

Corporation Commission to Determine Value of Oil.

Sec. 2. That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined, less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the corporation Commission of this State is hereby invested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State. Sec. 2, *Id.*

Statutory Definition of Waste. Protection of Strata.

Sec. 3. That the term "waste" as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of

crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demand. The corporation Commission shall have authority to make rules and regulations for the prevention of such waste, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil. Sec. 3, *Id.*

Production of Oil from Common Source. Inequitable Distribution Prohibited.

Sec. 4. That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm, or corporation, bears to the total production of such common source of supply. The corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply of such crude oil or petroleum, by any person, firm or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. Sec. 4, *Id.*

Gauge of Well to Be Taken.

Sec. 5. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this Act. Sec. 5, *Id.*

Hearings Before Corporation Commission. May Punish for Contempt.

Sec. 6. That any person, firm or corporation, or the Attorney General, on behalf of the State, may institute proceedings before the corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this Act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said Commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question or fact, arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law. Sec. 6, *Id.*

Appeals to Supreme Court. Supersedeas.

Sec. 7. That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this Act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court. Sec. 7, *Id.*

Contempt. Misdemeanor.

Sec. 8. That in addition to any penalty that may be imposed by the corporation Commission for contempt, any person, firm

or corporation or any officer, agent or employee thereof, directly or indirectly violating the provisions of this Act, shall be guilty of a misdemeanor, and upon conviction thereof, in a Court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars (\$5,000), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment. Sec. 8 *Id.*

State May Apply for Receiver.

Sec. 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation violating the provisions of this Act, shall be subject to have his or its producing property placed in the hands of a receiver by a Court of competent jurisdiction, at the suit of the State through the Attorney General or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this Act. Sec. 9, *Id.*

Construction of Act.

Sec. 10. That the invalidity of any section, subdivision, clause or sentence of this Act shall not in any manner affect the validity of the remaining portion thereof. Sec. 10, *Id.*

OIL AND GAS DEPARTMENT ACT

An Act for the creation of an oil and gas department under the jurisdiction of the corporation commissioners, to appoint a chief oil and gas conservation agent and conferring exclusive jurisdiction on the corporation commissioners in reference to the conservation of oil and gas and the inspection of gasoline and oil, and the product of crude petroleum, and repealing all acts or parts of acts in conflict therewith and declaring an emergency.

Oil and Gas Department. Conservation Agent.

Section 1. The corporation commission is hereby empowered and authorized to create and establish an oil and gas de

partment under the jurisdiction and supervision of the corporation commission, and is hereby authorized to appoint with the approval and consent of the Governor, a chief oil and gas conservation agent, who shall have charge of the oil and gas department herein authorized. Sec. 1, Act of 1917, p. 385. Approved Feb. 16.

Powers of Corporation Commissioner.

Sec. 2. All authority and duties now conferred upon the corporation commission or other departments of the State government in reference to the conservation of oil and gas and the drilling and operating oil and gas wells and the construction and regulation of oil and gas pipe lines, are hereby conferred exclusively upon the corporation commission. Sec. 2, *Id.*

Corporation Commission to Prescribe Plugging Regulations.

Sec. 3. The corporation commission is hereby authorized to prescribe rules and regulations for the plugging of all abandoned oil and gas wells. The same shall be plugged under the direction and supervision of the conservation agents of the corporation commission as may be prescribed by the corporation commission. All orders and regulations in reference to plugging wells shall be made after general hearing as now prescribed by law for the promulgation of orders by the corporation commission. Sec. 3, *Id.*

Inspection of Oil and Oil Products.

Sec. 4. Jurisdiction is hereby conferred upon the corporation commission to inspect all oils and liquids, the product of petroleum or other bituminous substances or into which the product of petroleum enters, by whatever name called, which may be or can be used for illuminating, heating or power purposes; manufactured in this State or brought into it, before the same are consumed, used, sold or offered to be sold or disposed of to merchants, consumers or other persons within this State, and the corporation commission is hereby authorized to appoint, with the approval of the Governor, oil inspectors who

shall perform the duties now prescribed by chapter 96, Session Laws 1915, and to perform such other duties as may be required by general rules and regulations of the corporation commissioner. Sec. 4, *Id.*

Pay of Inspector.

Sec. 5. The oil inspector hereby authorized shall receive the compensation now provided in chapter 96, Session Laws, 1915, for the inspection of oil and liquids. Sec. 5, *Id.*

OIL LEASES ON STATE LANDS

Commissioners of the Land Office May Lease School Lands.

Sec. 1. The commissioners of the land office are authorized to lease for oil and gas purposes any of the school or other lands owned by the State of Oklahoma which such commissioners may deem valuable for oil and gas, for the term of five years and as long thereafter as oil or gas may be produced therefrom in paying quantities, upon such terms and conditions and in such quantities as the commissioners shall by rules and regulations prescribe. Each such lease shall provide for the delivery to the State of a royalty of not less than one-eighth part of the oil or gas produced from the leased premises or in lieu thereof the payment to the State of the market value of said royalty interest as the commissioners may elect. Such leasing shall be made by public competition after not less than thirty days' notice by publication in two newspapers authorized by law to publish legal notices, one of which newspapers shall be published at the State Capitol, and the other in the county where the land is situated. Such leasing shall be let by sealed bids and each lease awarded to the highest responsible bidder. Such oil and gas leases may be assigned only with the consent and approval of the commissioners of the Land Office. *Provided*, That the commissioners have the right to reject any and all bids. Act 1917, p. 462.

Segregation of Oil Lands.

Sec. 2. The commissioners are empowered to segregate any

school or public lands for mineral purposes which the commissioners may, by order entered of record, determine to be valuable for oil, gas or mineral purposes, and each agricultural, grazing or other lease of the surface rights or interest in any land so segregated shall reserve to the State, its lessees or grantees the right to explore, drill and operate for oil or gas on such lands as well as the right to enter upon the said lands and enjoy the mining rights so reserved. *Id.*

Term of Lease, 5 Years. Appraisement on Quitting.

Sec. 3. All oil and gas leases executed by the commissioners of the Land Office shall be for a term of five years, and as long thereafter as oil or gas may be produced in paying quantities; *Provided*, Upon the forfeiture or cancellation or surrender or expiration of the lease by reason of its termination on account of the five years' limit, provided for in the "Enabling Act," or any other cause, the school land commissioners shall provide for the leasing of such land in the same way and in the same manner that the school land commissioners lease land which has never been leased. *Provided*, On such leases which are surrendered or which may expire or which have expired, the lessees or assignees shall have the value of the physical properties on such lease, which value shall be determined by a board of appraisers especially appointed by the school land commissioners for the appraising of physical property of leases. *Provided*, No physical property valuation shall be attached or considered in the making of a lease on a tract consisting of more than 640 acres. If no well shall be completed upon any leased premises within one year from the date of the lease, the lessee shall pay to the State of Oklahoma an annual rental in advance of such sum per acre as the commissioners shall prescribe in the lease, which payment shall operate to defer the completion of a well during the year for which such rental payment is made. *Id.*

Conditions of Lease. Bond.

Sec. 4. All leases for oil and gas shall contain a provision to drill one well on each leased tract within one year from the date

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of such lease, or on failure to complete such well to pay an annual rental per acre as hereinbefore provided. All such leases shall further provide that the lessee shall drill a sufficient number of wells upon the leased lands to offset all producing wells upon any adjoining or contiguous lands, and a further provision that the failure of the lessee to diligently and in good faith operate the leased premises for oil and gas to as full an extent as other lands are operated in the general oil and gas field where such leased lands are located shall forfeit all rights of the lessee under such lease. Each lessee shall execute a bond to the State of Oklahoma with sureties to the approval of the commissioners and in such sum as the commissioners shall prescribe, conditioned for the faithful performance of the provisions of the lease and for the payment of all recoverable damages which such lessee may cause to the property, crops or rights of the surface lessee. Each lease shall further provide that in the event the State shall at any time operate a refinery for the refining of crude petroleum or the extraction of any of its products or by-products, the State shall have the preference right to purchase and take the production or output of any such oil or gas well at the prevailing market price thereof, upon the commissioners serving written notice upon the owners of any well of the purpose and readiness of the State to take such production. *Id.*

Commissioners to Publish Rules.

Sec. 5. The commissioners of the Land Office may adopt and promulgate appropriate rules and regulations for carrying into effect the provisions of this Act; but no restrictions or prohibitions against any bidder or prospective bidder shall be made other than as provided in this Act. *Id.*

Surface Injuries.

Sec. 6. The lessee under any oil or gas lease executed by the commissioners of the Land Office shall be liable to the surface owner or lessee for all injury, damage or loss occurring to the surface interest, interest in such lands or to any building, crops

or improvements or other property located upon or used in connection with said land. *Id.*

Disposition of Bonuses and Royalties.

Sec. 7. All funds arising from bonuses, royalties or rentals for oil and gas leases shall be carried into and credited to the permanent funds for the use and purpose designated in the grant of such lands by Congress to the State of Oklahoma, and all such funds shall be kept, handled, and used in like manner as other moneys belonging to said permanent funds. *Id.*

LICENSE TO FOREIGN CORPORATION TO SELL GAS

Interstate Pipe Lines.—License required.

Section 1. All domestic gas pipe line corporations in this State which are now, or shall hereafter fully comply with the laws of this State, and all municipal corporations, owning or operating a gas plant, or which may hereafter own or operate a gas plant, may contract with and secure from foreign corporations, operating interstate gas pipe lines, the supply of gas for said domestic gas companies. And said interstate gas pipe line companies or foreign corporation may enter into said contract and deliver said gas, upon obtaining a license from the corporation Commission, which is hereby authorized to grant a license to do and transact that particular business of supplying domestic corporations with natural gas, and the taking out of said license and the conduct of said business with domestic pipe line companies, shall not prejudice the said interstate pipe line companies, or foreign corporations in the transaction and conducting of their interstate business; provided, the corporation Commission may revoke said license when, in its discretion, the public interest may be best subserved thereby. Act March 26, 1913, p. 165.

Interlocking Foreign and Domestic Pipe Lines.

Sec. 2. No person or corporation, interested or doing business as an interstate gas pipe line company, shall be interested in or

own or control any of the stock of a domestic corporation, purchasing gas from interstate pipe line company. *Id.*

STANDARD METERS

Municipal Gas Companies to Use Standard Meters.

Sec. 1. That all persons, firms, corporations or other business organizations engaged in the business of furnishing natural gas in municipalities in this State, to the inhabitants thereof, shall do so through standard meters at meter rates; provided, that this Act shall only apply to towns where the population exceeds five hundred, and shall not prohibit the sale of gas at a flat rate of Federal, State or municipally owned buildings, institutions or plants; provided, further, that this Act shall not abrogate any existing contract or affect or change the terms or conditions of any franchise granted by any municipal corporation prior to and in effect April 28, 1913. Sec. 1, Act 1915, p. 333, amending Act of 1913, p. 309.

Fines Imposed.

Sec. 2. Any person, firm, corporation or other business organization who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than five dollars nor more than twenty-five dollars, and each day of such violation shall be deemed a separate offense. Sec. 2, *Id.*

PENNSYLVANIA.

Wells to Be Plugged Against Water.

All owners of and operators of oil lands within this commonwealth shall in a practical manner plug their wells, at proper depth, with wood and sediment, in a manner sufficient to exclude all fresh water from the oil-bearing rock, and to prevent

the flow of oil or gas into fresh water. Sec. 1, Act 187, p. 56. Purdon's Digest, p. 3342.¹

Fine for Omission.

Any person found guilty of violating the provisions of this Act shall be fined in any sum not less than twenty nor more than one hundred dollars for each and every offense, which shall be paid, one-half to the informer and the other half to the school district in which the offense is committed; which shall be collected as fines of like manner are by law collected. Sec. 2, *Id.*

Adjoiners, When May Plug.

Whenever the owner of any well has abandoned the same or does not reside in the county in which it is situated, any person owning property adjoining may enter in and take possession of any well, for the purpose of carrying out the provisions of the first section of this Act, where the owner has refused or neglected to plug said well, so as to shut off the fresh water from the oil rock and excludes the gas and oil from the fresh water, as provided in section first at the expense of the owner. Sec. 3, *Id.*

Details of Plugging.

Whenever any well shall have been put down for the purpose of exploring for and producing oil, upon abandoning or ceasing to operate the same, the owner or operator shall, for the purpose of excluding all fresh water from the oil-bearing rock, and before drawing the casing, fill up the well with sand or rock sediment to the depth of at least twenty feet above the third sand or oil-bearing rock, and drive a round, seasoned, wooden plug at least two feet in length, equal in diameter to the diameter of the well below the casing, to a point at least five feet below the

¹ All the Pennsylvania Statutes printed under this head, unless otherwise noted, are found in Purdon's Digest, 13th Ed. pp. 3342-3345, 3505-3507 and 3533-3535.

bottom of the casing and immediately after the drawing of the casing, shall drive a round wooden plug into the well, at the point just below where the lower end of the casing shall have rested, which plug shall be at least three feet in length, tapering in form, and to be of the same diameter at the distance of eighteen inches from the smaller end, as the diameter of the well below the point at which it is to be driven; (and) after it has been properly driven, shall fill in on top of same with sand or rock sediment, to the depth of at least five feet. Sec. 1, Act June 10, 1881, p. 110.¹

Penalty \$200.

Any person who shall violate the provisions of this Act shall be liable to a penalty of two hundred dollars, one-half to be for the use of the informer, and one-half to the use of school district in which such well may be situated, to be recovered as debts of like amount are by law recoverable. Act June 10, 1881, p. 110, sec. 2, *Id.*

Adjoining Owners May Plug.

Whenever any owner or operator shall neglect or refuse to comply with the provisions of section 1 of this Act, the owner of, or operator upon any land adjoining that upon which such abandoned well may be, may enter, take possession of said abandoned well and plug the same as provided by this Act, at the expense of the owner or operator whose duty it may be to plug the same. *Id.*, § 3.

The 3 sections above printed are found in Purdon's Digest, 13th Ed., p. 3342.

Details of Plugging and Filling.

Whenever any well shall have been put down on lands of any person, or corporation, for the purpose of exploring for or producing gas, upon abandoning or ceasing to operate the

¹ This Act is construed in *Dawson v. Shaw*, 28 Pa. Supr. Ct. 563 and *Bartoe v. Guckert*, 158 Pa. 124.

same, the person, or corporation, drilling or owning the well, shall, before drawing the casing, fill up the well with sand, or rock sediment, to the depth of at least twenty feet above the gas-bearing rock, and drive a round seasoned wooden plug, at least two feet in length, equal in diameter to the diameter of the well below the casing, to a point at least five feet below the bottom of the casing, and, immediately after the drawing of the casing, shall drive a round wooden plug into the well, at the point just below where the lower end of the casing shall have rested, which plug shall be at least three feet in length, tapering in form, and to be of the same diameter at the distance of eighteen inches from the small end of the diameter of the well below the point at which it is to be driven. After the plug has been properly driven, there shall be filled in on the top of the same, sand or rock sediment, to the depth of at least five feet. Sec. 2, Act 1885, p. 145.

Penalty \$200.

Any person who shall violate the provisions of the preceding section, shall be liable to a penalty of two hundred dollars, to be recovered as debts of like amount are by law recoverable. Sec. 3, *Id.*

When Adjoining Owners May Plug.

Whenever any person shall neglect, or refuse to comply with the provisions of this Act, with regard to plugging wells, any owner of lands adjacent, or in the neighborhood of such unplugged well, may enter and take possession of said abandoned well, and plug the same, as provided by this Act, at the expense of the person, or company, whose duty it may have been to plug the same. Sec. 4, *Id.*

Duty to Prevent Escape of Salt Water.

Upon the abandonment or ceasing to operate or use any well which shall have been drilled for oil or gas, it shall be the duty of the person or persons interested in such well, to plug the same so as to completely shut off and prevent the escape of all water

therefrom which may be impregnated with salt or other substances which shall render such water unfit for use for domestic, steam-making or manufacturing purposes, and in such manner as to prevent water from any such well injuring or polluting any spring, water well or stream which is or may be used for the purposes aforesaid. Sec. 1, Act 1891, p. 122.

Penalty.

Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor, and shall be sentenced, upon conviction thereof to pay a fine of not more than one thousand dollars, or to undergo an imprisonment for a period not exceeding six months, or both, or either, at the discretion of the Court. Sec. 2, *Id.*

Interested Party May Plug Well.

Whenever any person may be injured by neglect or refusal to comply with the first section of this Act, it shall be lawful for such person, after notice to the owner or lessee of the premises upon which such well is located, to enter upon and fill up and plug such well in the manner directed by the first section hereof, and thereupon to recover the expense thereof from the person or persons whose duty it was to plug and fill up said well, in like manner as debts of such amounts are recoverable. Sec. 3 *Id.*

Accounting between Cotenants of Oil Wells.

From and after the passage of this Act any person or persons performing labor of any kind whatever, or furnishing material for, upon or about any drilling, pumping or producing oil or gas well shall have the right to bring suit in *assumpsit* against any joint owner, joint tenant or tenant in common holding an interest in and operating such drilling, pumping or producing oil or gas well, to recover from such joint owner, joint tenant, or tenant in common, the *pro rata* share due and owing by such joint owner, joint tenant, or tenant in common for any labor done, or materials furnished, in, upon or about such drilling,

pumping or producing oil or gas well, and the interest of such joint owner, joint tenant, or tenant in common shall be subject to levy and sale upon any execution issued to enforce collection of any claim under this Act, after judgment obtained by due process of law. Sec. 1, Act 1891, p. 41.

Idem. Non-joining Co-owner Not Bound.

Any joint owner, joint tenant or tenant in common, paying the *pro ratu* share of the necessary expenses of any drilling, producing or pumping oil or gas well for any other joint owner, joint tenant or tenant in common holding an interest in and operating such drilling, pumping or producing oil or gas well shall have or possess all the rights of action, as provided in the first section of this Act, to the same extent as is given hereby to the person or persons performing the said labor or furnishing such materials: *Provided*, That no joint owner, joint tenant or tenant in common shall be required by this Act to pay any share of the expense of operations commenced and carried on without his authority or consent. Sec. 2, *Id.*

Malicious Injury to Well, Tank or Pipe.

If any person shall willfully and maliciously injure any well sunk for the production of oil, or gas, or water, or any tank intended or used for the storage of oil, or gas, or water, or any line of pipe intended or used for the transportation of oil or gas, or water, or any machinery connected with such wells, tanks or lines of pipe, he shall be guilty of a misdemeanor, and upon being thereof convicted, shall be sentenced to pay a fine not exceeding one thousand dollars, and undergo imprisonment, not exceeding three years, or both, or either, at the discretion of the Court. Sec. 1 Act 1885, p. 145.

Mining Cotenants Act Extended to Oil.

The provisions of an Act to enable joint tenants, tenants in common and adjoining owners of mineral lands in this commonwealth to develop the same, passed the 21st day of April, 1854, and the supplements thereto, be and the same are hereby

extended to mining for carbon oils, manufacturing, refining and selling, or conveying the same to market. Sec. 1, Act 1861, p. 438.

Consolidation of Oil Mining Companies.

The provisions of the Act, entitled "An Act relating to railroad companies," passed May 16th, Anno Domini 1861, and the supplement thereto, entitled "A further supplement to an Act, entitled 'An Act relating to railroad companies,' passed May 16th, Anno Domini 1861," which supplement was approved the 23d day of March Anno Domini 1865, be and the same are hereby extended to oil and other mining companies. Act April 18, 1867, P. L. 90, § 1.

Merger of Oil Companies.

Any two or more oil or other mining companies which shall, according to the provisions of said recited Acts, agree to merge or consolidate their rights and privileges granted to them under the laws of this commonwealth, are hereby authorized to assume such name as the board of directors selected by the joint action of said companies may designate, and also to fix the amount of the capital stock of said company after the consolidation, and designate the time and places of meeting of the board of directors: *Provided*, That immediately after said consolidation shall have been effected, it shall be the duty of said company to certify to the Secretary of the commonwealth the name of said company and the amount of its capital stock. Act April 18, 1867, P. L. 90, § 2.

Consolidation of Oil Companies.

It shall be lawful for the president and directors, or a majority thereof of any oil or other mining company, agreeing or desirous of accepting the provisions of this Act, to make such merger and consolidate in manner and form as hereinbefore provided. Act April 18, 1867; P. L. 90, § 3.

Oil Companies May Hold Stock and Bonds of Other Companies.

Corporations incorporated under the provisions of the Act, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, Anno Domini 1874, for the purpose of mining for petroleum, may subscribe for, purchase, hold and dispose of stock and bonds of any other corporation incorporated under the said Act for the same purpose, and may also subscribe for, purchase, hold and dispose of stocks and bonds of any corporation incorporated under the provisions of the Act, entitled "An Act to provide for the incorporation and regulation of natural gas companies, approved the 29th day of May, Anno Domini 1885. And may also subscribe for, purchase, hold and dispose of stocks and bonds in any corporations of other States incorporated for similar purposes: *Provided*, That the amount of such stock held by any corporation, together with the amount of its capital stock, shall not exceed, in the aggregate, the amount to which the capital of such corporations is limited by the 39th section of the Act to which this is a supplement. See. 1, Act 1889, p. 76.

Dissolution of Oil Corporations.

Whenever any corporation organized for the purpose of mining for petroleum or other products and marketing the same, and owning real estate in any county of this commonwealth, shall have been in existence for the period of thirty years or longer and for the period of ten years or more prior to the passage of this Act shall not have been engaged in the business of such mining, nor have earned and distributed to the shareholders thereof any dividends out of its net earnings, it shall be the duty of the Courts of common pleas of any county in which such real estate may be situated, upon the petition of the owner or owners of not less than one-third of the capital stock of any such corporation and after personal notice to other known stockholders resident within the county, and notice to all others interested, by advertisement, in at least one newspaper of general circulation published within the county, for not less than

two months, if the facts alleged in the petition be not denied, or, if denied, shall be found by the Court to be true, to order and decree a dissolution of such corporation, and to order and direct the sale of the real estate thereof by a trustee to be appointed for that purpose, and to decree distribution of the proceeds of such sale or sales to and among creditors or shareholders entitled thereto, in the same manner that the real estate of other dissolved corporations is now sold and the proceeds thereof distributed under the discretion of said Courts. Sec. 1, Act 1903, p. 79.

Oil Transportation and Storage.

Every corporation, company, association, person or persons who are now engaged, or shall hereafter engage or continue in the business of transporting or storing crude or refined petroleum, by means of pipe line or pipe lines, or storage by tanks, shall conduct such business in conformity with and subject to the provisions of this Act. Sec. 1, Act 1878, p. 104.

No Receipts or Vouchers Until Oil Delivered.

No receipt, certificate, accepted order or other voucher shall be issued or put in circulation, nor shall any order be accepted or liability incurred for the delivery of any petroleum, crude or refined, unless the amount of such petroleum represented in or by such receipt, certificate, accepted order, or other voucher or liability, shall have been actually received by and shall then be in the tanks and lines, custody and control of the corporation, company, association, person or persons issuing or putting in circulation such receipt, certificate, accepted order or voucher, or incurring such liability. Sec. 2, *Id.*

Duplicate Receipts, When Allowed.

No duplicate receipt, certificate, accepted order or other voucher shall be issued or put in circulation, or any liability incurred for any petroleum, crude or refined, while any former liability remains in force or any former receipt, certificate, accepted order or other voucher shall be outstanding and un-

cancelled, except in case such original paper shall have been lost; in which case a duplicate, plainly marked "duplicate" upon the face, and dated and numbered as the lost original was dated and numbered, may be issued. Sec. 2, *Id.*

Reissue of Vouchers Forbidden.

No receipt, voucher, accepted order, certificate, or written evidence of liability of such corporation, association, company, person or persons, on which petroleum, crude or refined, has been delivered, shall be reissued, used or put in circulation. Sec. 2, *Id.*

Receipts to Be Surrendered Unless Lost.

No petroleum, crude or refined, for which a receipt, voucher, accepted order, certificate or liability incurred, shall have been issued or put in circulation, shall be delivered, except upon the surrender of the receipt, voucher, order or liability representing such petroleum, except upon affidavit of loss of such instrument made by the former holder thereof. Sec. 2, *Id.*

Notice before Issue of Duplicate.

No duplicate receipt, certificate, voucher, accepted order, or other evidence of liability shall be made, issued or put in circulation, until after notice of the loss of the original, and of the intention to apply for a duplicate thereof, shall have been given, by advertisement, over the signature of the owner thereof, in at least four successive issues of a daily or weekly newspaper published in the county where such duplicate is to be issued. Sec. 2, *Id.*

Receipts How Cancelled.

Every receipt, voucher, accepted order, certificate, or evidence of liability, when surrendered, or the petroleum represented thereby delivered, shall be immediately cancelled, by stamping or puncturing the same across the face, in large and legible letters, with the word "cancelled," and giving the date

of such cancellation; and it shall then be filed and preserved in the principal office of such corporation, association, company, person or persons. Sec. 2, *Id.*

Written Order Required.

No corporation, association, company, or the officers or agents thereof, or any person or persons engaged in the transportation or storage of petroleum, crude or refined, shall sell or incur, ship, transfer, or in any manner remove, or procure or permit to be sold, incumbered, shipped, transferred, or in any manner removed from the tanks or pipes of said corporation, association, company, person or persons engaged in the business aforesaid, any petroleum, crude or refined, without the written order of the owner or owners thereof. Sec. 3, *Id.*

Monthly Statements from Pipe Line and Storage Companies.

Any corporation, association, company, and the officers, agents, managers and superintendents thereof, and any persons that are now or may hereafter be engaged or continue in the business of transportation by pipe lines, or storing crude or refined petroleum, shall, on or before the tenth day of each month, make or cause to be made, and posted in the principal business office where such corporation, company, association, person or persons is or are or may be engaged in business, in an accessible and convenient place, for the examination thereof by any person desiring such examination, and shall keep so posted continuously until the next succeeding statement is so posted, a statement plainly written or printed, signed by the officer, agent, person or persons having charge of the pipes and tanks of said corporation, company, association, person or persons, and also by the officer or officers, person or persons, having charge of the books and accounts thereof, which statement shall show, in legible and intelligent form, the following details of the business:

I. How much petroleum, crude or refined, was in the actual and immediate custody of such corporation, company, association, person or persons, at the beginning and close of the

previous month, and where the same was located or held, describing in detail the location and designation of each tank or place of deposit, and the name of the owner;

II. How much petroleum, crude or refined, was received by such corporation, company, association, person or persons, during the previous month:

III. How much petroleum, crude or refined, was delivered by such corporation, company, association, person or persons, during the previous month:

IV. How much petroleum, crude or refined, such corporation, company, association, person or persons, were liable for the delivery or custody of, to other corporations, companies, associations or persons, at the close of such month;

V. How much of such liability was represented by outstanding receipts or certificates, accepted orders or other vouchers, and how much was represented by credit balances.

The statements so required to be made, shall also be sworn to by said officers, agent, person or persons, before some other officers authorized by law to administer oaths, which oath shall be in writing, and shall assert the familiarity and acquaintance of the deponent with the business and condition of such corporation, company, association, person or persons, and with the facts sworn to, and that the statements made in the said report are true.

VI. That all the provisions of this Act have been faithfully observed and obeyed, during the said previous months. Sec. 5, *Id.*¹

Details of Statement.

All the amounts in the statements required by this Act, when the petroleum is handled in bulk, shall be given in barrels and hundredths of a barrel, reckoning forty-two gallons to each barrel; and when such petroleum is handled in barrels or packages, the number of such barrels or packages shall be given; and such statements shall distinguish between crude and refined petroleum, and give the amount of each. Sec. 6, *Id.*

¹There is no section 4 in the Act cited.

Oil in Stock to Tally with Outstanding Orders.

Every corporation, company, association, person or persons engaged in the business aforesaid, shall, at all times, have in their tanks and pipes an amount of merchantable oil equal to the aggregate of outstanding receipts, accepted orders, certificates, vouchers, acknowledgments,, evidences of liability, and credit balances upon the books thereof. Sec. 6, *Id.*

Fine and Imprisonment both Imposed.

Any corporation, association, company or officers or agents thereof, or person or persons who shall make or cause to be made, sign or cause to be signed, issue or cause to be issued, put in circulation or cause to be put in circulation, any receipt, accepted order, certificate, voucher, or evidence of liability, or shall sell, transfer or alter the same, or cause such sale, transfer or alteration, contrary to the provisions of this Act, or shall do or cause to be done any of the Acts prohibited by the second section of this Act, or omit to do any of the Acts by said section directed, shall be guilty of a misdemeanor; and on conviction thereof, shall be sentenced to pay a fine of not exceeding one thousand dollars, and undergo punishment not less than ten days nor exceeding one year. Sec. 7, *Id.*

Disposing of Oil without Owner's Consent.

Any corporation, association, company, or officer or agent thereof, or person or persons, who shall sell, incumber, transfer or remove, or cause or procure to be sold, transferred or removed, from the tanks or pipes of such corporation, company, association, person or persons, any petroleum, crude or refined, without the written consent of the owner or owners thereof, shall be guilty of a misdemeanor; and upon conviction thereof, shall be sentenced to pay a fine of one thousand dollars, and undergo an imprisonment not less than ninety days and not exceeding two years. Sec. 8, *Id.*

Failure to Report Monthly.

Any corporation, association, company, person or persons, engaged in the business of transporting by pipe lines, or storing petroleum, crude or refined, and each and every officer or agent of such association, corporation, company, person or persons, who shall neglect or refuse to make the report and statement required by the fifth section of this Act, within the time and in the manner directed by said section, shall forfeit and pay the sum of one thousand dollars and in addition thereto the sum of five hundred dollars for each day after the tenth day of the month that the report or statement required by said section 5 shall remain unposted as therein directed. Sec. 9, *Id.*

Oil Vouchers Negotiable.

Accepted orders and certificates for petroleum, issued by any corporation or partnership association engaged in the business of transporting and storing petroleum in this State, shall be negotiable, and may be transferred by endorsement either in blank or to the order of another; and any person to whom the said accepted orders and certificates shall be so transferred, shall be deemed and taken to be the owner of petroleum therein specified. Sec. 1, Act June 20, 1883, p. 127.

Must Allow Inspection with Use of Tools.

Every firm, association or corporation within this commonwealth, or engaged in the business of storing or transporting crude or refined petroleum by means of pipe lines, shall, on or before the first day of July, next ensuing, and every firm, association or corporation that may hereafter engage in said business, shall, before engaging therein, file in the office of the Secretary of the commonwealth a writing authorizing any person or persons who may be appointed to inquire into the condition of such firm, corporation or association, under existing law or this Act, or any law that may be hereafter enacted, to enter upon and have free access to the premises of such firm, association or corporation, whether the same may be in this or some other State, or partly in this and partly in some other

State or States, for the purpose of inspecting and gauging the petroleum, crude or refined, that may be in the custody of said firm, association or corporation, and of examining the books, accounts and papers thereof, relative to oil in its custody, and liability therefor, including oil owned by said firm, association or corporation. And the said writing shall extend to and embrace full permission to use the tools, implements and appliances of said firm, association or corporation, for the purposes of making such inspection and gauge, and shall grant full and absolute authority for the business hereof, and shall remain good and valid so long as such firm, association or corporation continue to do business in this State. Sec. 1, Act of July 5, 1883, p. 186.

Forfeiture of Charter and Denial of Judicial Protection the Penalty.

The person or persons who may be appointed under any law of this commonwealth, to make such examination, gauge and inspection, shall produce to the Secretary of the commonwealth a certificate, attested by satisfactory proof of his or their appointment as such examiner or examiners, whereupon the Secretary of the commonwealth shall issue to such examiner or examiners, a certified copy of the writing aforesaid, accompanied by a certificate, countersigned by the governor, that the person or persons therein named have been duly appointed to make such examination, inspection and gauge as aforesaid, and to exercise, under the appointment of the commonwealth the authority delegated under the writing aforesaid, for a period therein named, which shall not exceed thirty days; and it shall be the duty of any such firm, association or corporation, upon the production of such certificate and certified copy aforesaid to any of its officers or agents, to give without delay, to such examiner or examiners free access to its offices, and such books, papers, accounts, as show the amount of oil in its custody, and for which it is liable, including oil owned by said firm, association or corporation, and its tanks, stations and other property, and to furnish information regarding the same. But if such firm, association or corporation, its officers or agents, shall refuse or deny access to or entry upon the premises of such firm, association or

corporation, or shall in anywise hinder, obstruct or prevent said examiner or examiners from making an examination, gauge and inspection of the books, papers, accounts aforesaid, and of the tanks and pipes of said firm, association or corporation, or shall wilfully withhold information regarding the same, or deny the use of its tools and appliances for the purpose of making such examination, inspection and gauge, such refusal, hindrance, denial or obstruction shall work a forfeiture of the charter of any such corporation chartered by this commonwealth, or of the right to do business in this commonwealth of any such firm or association or foreign corporation; and in such case the right of such foreign corporation to bring suits in the Courts of this State shall cease. In all cases where the tanks, pipes, books, offices, accounts and petroleum to be examined and gauged are situated in this State; it shall only be necessary for the examiner or examiners to produce to such firm, association or corporation, or to any of its officers or agents, a certificate of the Court or other lawful authority, appointing him or them, showing him or them to be duly accredited and lawful examiner or examiners. Sec. 2, *Id.*

Not More Than 25 Examiners to Be Appointed Per Diem.

The owners of oil which is in the custody of any such firm, association or corporation, not less in the aggregate, than two percentum of the amount of oil in custody of such firm, association or corporation, as shown by its last preceding monthly statement, may, at any time, but not oftener than once in three months, present their petition to the Court of common pleas of the county wherein such firm, association or corporation may have its principal office, and of any foreign corporation, to the Court of Common pleas in any county in which said corporation may be doing business, or to any law judge of said court in vacation, setting forth, under oath, their ownership, as aforesaid, and desire for the appointment of examiners for the purposes of this Act; whereupon the court, or any judge thereof in vacation, shall forthwith appoint such number of impartial, disinterested and competent persons as may be necessary not exceeding twenty-five, as examiners, one of whom shall be designated as

chief, and the others shall be subordinates, and shall fix the amount of their compensation, which shall not exceed five dollars per day. Sec. 3, *Id.*

Examiners to Gauge and Inspect.

The Court or judge, by order, shall direct and empower such examiners under the supervision of their chief, to immediately inspect and measure all the petroleum, crude or refined, in the custody of any such firm, corporation or association, named in said petition, on the day or days of inspection, and to examine the books of such firm, association or corporation, relating to the issue and cancellation of receipts, certificates, accepted orders, vouchers, or evidences of liability, and to its own accounts with persons, companies or corporations with whom it deals in the receipt or delivery of crude or refined petroleum. Such examiners, when appointed, shall immediately be sworn, before any authorized officer, to perform his duties with fidelity and according to law; which oath shall be reduced to writing, signed and filed with the prothonotary; and they shall then, under supervision of the chief examiner, make immediate examination, gauge and inspection, as required by said petition and order, and by this Act. Sec. 4, *Id.*

Details of Examiner's Reports.

Upon the completion of such inspection, examination and measurement, it shall be the duty of the examiner or examiners, or in the event of the death, resignation or declination, or inability to act of any of them, then the others or any of them, within thirty days after their appointment, to make to the court appointing them a written, signed and sworn report of such examination, inspection and measurement, and file the same of record with the prothonotary thereof, which report shall show:

I. How much merchantable, and also how much unmerchantable petroleum, crude or refined, they found in the tanks and lines of such firm, association or corporation, and where the same was located or held, by description of tanks, also the per-

centage of merchantable oil mingled with the B. S. and sediment.

II. For the custody or delivery of how much crude or refined petroleum they found such firm, association or corporation to be liable at the same date.

III. How much of such liability was represented by outstanding receipts, accepted orders, certificates, vouchers, or evidences of liability, and how much by credit balances. Sec. 5, *Id.*

Penalty for False Reports.

Any examiner appointed aforesaid, who shall make any false examination, inspection, measurement or report, or shall make known, directly or indirectly, to any person, any information he may become possessed of in the course of his examination, inspection or measurement, except by means of his report, made and filed in accordance with this act, or who shall receive, directly or indirectly, any fee, reward or benefit, or the promise of any fee, reward or benefit, other than that provided by this Act, for the performance or non-performance of any duty or thing contemplated by this Act, or connected with the said employment, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of one thousand dollars, and to imprisonment not less than three months, or more than two years. Sec. 6, *Id.*

Refusal of Access a Misdemeanor.

Any officer, agent, manager, superintendent or employee of any firm, corporation or association as aforesaid, who shall neglect or refuse, after demand made, to give to any authorized examiner full and free access to any and all offices, pipes, tanks, accounts, books and vouchers as aforesaid, or deny to him the use of any tools or appliances as required by him in pursuance of his appointment and this Act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars, and to imprisonment not exceeding one year. Sec. 7, *Id.*

Appropriation of Fines.

All fines recovered from any person under this Act, and all penalties, shall be paid to the proper officer for the use of the county wherein such suit is brought or prosecution instituted. Sec. 8, *Id.*

Payment of Expenses.

The examiners shall also file with their report an itemized and sworn statement of the entire expenses incurred in making such examination, inspection and gauge, including their compensation, to be taxed as costs in other cases, and if allowed and approved by the Court, the same shall be paid by the firm, corporation or association named in the petition within twenty days, and upon failure to do so, judgment may be entered forthwith in favor of the persons performing the services, for the amount due them, and against said firm, corporation or association, upon which execution may at once issue. Sec. 9, *Id.*

Proviso as to Appointment of Inspectors.

Nothing contained in this Act shall be construed to interfere with any law authorizing the appointment of an inspector of oils. Sec. 10, *Id.*

PIPE LINE COMPANIES**Local Act Extended.**

The provisions of an Act relating to corporations for mechanical, manufacturing, mining and quarrying purposes, approved July 18, 1863, and the supplements thereto, be and the same are hereby extended to the transportation and storage of petroleum in the counties of Venango, Warren, Forest, Armstrong, Clarion, Butler, Crawford and Erie; and that any company organized for such purposes, under the provisions of said Act, shall have the right to transport, store, insure and ship petroleum, and for that purpose lay down, construct and maintain pipes, tubing, tanks, offices and such other machinery, devices or

arrangements as may be necessary, and to enter upon, use and occupy such lands as may be requisite for the purposes of the company and for rights of entry upon lands, rights of way and the use of material necessary to the construction, maintenance and operation of said lines of pipes and fixtures as aforesaid, they shall be entitled to all the rights and privileges, and be subject to all the limitations and restrictions of railroad companies, as contained in the Act relating to railroad companies, approved February 19, 1849, and the supplements thereto: *Provided, however,* That nothing herein contained shall be construed to authorize the construction of any railroad. Sec. 1, Act 1872, p. 22.

Change of Location of Pipes. Branches. Preferences Forbidden.

Any company organized under the provisions of this Act may at any time change the location of the whole or any part of their pipes, or construct a branch or branches from any point or points on the main line, to any other point or place within the counties aforesaid; but before doing so, a majority of the directors of said company shall make, or cause to be made, a certificate in writing, setting forth the proposed change, particularly setting forth the routes and termini, and have the same acknowledged before a notary public, and recorded in the same manner as shall be provided in the original articles of the association: *Provided,* That no line of pipe shall be laid, under the authority of this act, within five miles of the State line for the purpose of carrying oil out of the State; and that the owners, producers and shippers of all oil intended for Philadelphia, Baltimore and New York, using pipe lines laid under this Act, shall give the preference to the lines of road traversing the greatest distance in this State, at the same rates for transportation. Sec. 2, *Id.*

Act of 1874 Amended. Pipe Line Companies to Be Recorded.

[Companies may be incorporated for] the carrying on of any mechanical, mining, quarrying or manufacturing business, in-

cluding all of the purposes covered by the provisions of the Act of the general assembly, entitled "An Act to encourage manufacturing operations in this commonwealth," approved April 7, 1849, and entitled "An Act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July 18, 1863, and the several supplements to each of said Acts, including the incorporation of grain elevators, storage warehouse and storage yard companies; and also including the storage and transportation of water, with the right to take rivulets and land, and erect reservoirs for holding water and excluding the distilling or manufacture of intoxicating liquors, and companies may be organized under this Act, having the right to transport, store, insure and ship petroleum, and for that purpose to lay down, construct and maintain pipes, tubing, tanks, offices, and such other machinery, devices or arrangements as may be necessary to fully carry out that right; and also with the right to enter upon, take and occupy such land and other property as may be requisite for the purposes of such corporations. (Sec. 1, Act June 2, 1883, p. 61.)

Corporate Powers and Liabilities of Pipe Lines.

All companies incorporated, or hereafter to be incorporated, under the provisions of the Act to which this is a supplement, for the purpose of the transportation and storage of oil, by means of pipe lines and tanks, for the public, shall have the power to take, hold, purchase and transfer such real and personal property as the purposes of the corporation may require, not exceeding the amount limited by the charter, together with the right to appropriate and take lands, easements and rights of way for locating and constructing steam pumps, tanks, pump houses and offices, and laying down its pipes or tubes, connections and trenches from any point or points in any of the counties in which petroleum is produced, to any railroad, canal, navigable river, port or city within this commonwealth, and for all necessary purposes of the corporation, including right to cross railroads, and the right to appropriate a right of way and locate its pipes and tubes upon and over, under and across any lands, waters, streams, rivulets, roads, turnpike roads, canal or other

public highway, not, however, passing through any burying ground or place of public worship, or any warehouse, mill, manufactory, store or dwelling-house without the consent of the owner or owners thereof being first had and obtained: *Provided*, That when said pipe line is located through, over, under or upon the streets, lanes, alleys or highways within the corporate limits of any city or borough, the consent of the municipal authorities to said location shall be first had and obtained; which consent said municipal authorities are hereby empowered to give upon terms to be agreed upon by said city or borough authorities and said corporation: *And provided, further*, In case said pipe lines cross any railroad or canal, the same shall be located under or above the same, so, however, as not to interfere with the use of the same: *Provided, further*, That corporations organized under this Act and its supplements, shall not take a fee in any lands acquired under any of its provisions, except such as are acquired by actual purchase, and that upon the abandonment for the purposes of transporting oil, any lands taken by any company organized under the act to which this is a supplement and its supplements, said lands so taken, otherwise than by actual purchase, shall revert to the original owners or their successors: *And provided, further*, That any pipe line, so laying its pipes under the provisions of this Act, in occupying any lands cleared and used for agricultural purposes, shall bury the same at least 24 inches below the surface, and if any line of pipe shall be laid over or through any waste or woodland, which shall afterwards be changed from waste or woodland to farming land, then it shall be the duty of the pipe line company to immediately bury the pipe, to the depth of at least 24 inches as aforesaid; *Provided*, That all pipe lines shall be laid above the flood lines or beneath the bed, in crossing creeks or rivulets: *And provided, further*, That any company laying a pipe line under the provisions of this Act shall be liable for all damages occasioned by leakage, breaking of pipes or tanks: *Provided, further*, That all tanks erected for the storage or transportation of oil, shall be protected and surrounded by ditches and embankments, so that, in case said tanks should

break or be broken, the oil stored cannot damage adjoining property. Sec. 2, *Id.*

Procedure to Condemn Right of Way.

In all cases when under the provisions of this Act, said corporation is permitted to take lands or property for the public purposes of said corporation, or to acquire right of way easement, for the purpose of locating its pipes or branches over, upon, under or across any lands, streams, rivulets, roads, turnpike roads, railroads, canals or other highways and the said corporation cannot agree with the owner or owners of any such lands, road, turnpike road, railroad, canal or other highway or franchise, for the compensation proper for the damage done, or likely to be done to or sustained by any such owner or owners of said waters, streams, land, road, turnpike road, railroad, land or other highways, which such corporation may enter upon, use in pursuance of the authority herein given, or by reason of the absence or legal incapacity of any such owner or owners, no such compensation can be agreed upon, the Court of common pleas of the proper county, on application thereto by petition, either by said corporation, or the owner or owners, or any one in behalf of either, shall appoint seven discreet and disinterested freeholders, residents of the proper county, and appoint a time, not less than twenty days, nor more than thirty days thereafter, for said viewers to meet at or upon the premises, where the damages are alleged to be sustained, or the property taken, of which time and place ten days' notice shall be given by the petitioner to the said viewers and the other party; and the said viewers, or any five of them, having been first duly sworn or affirmed, faithfully, justly and impartially to decide and a true report to make concerning all matters and things to be submitted to them and in relation to which they are authorized to inquire in pursuance of the provisions of this Act, and having viewed the premises, they shall estimate and determine the quantity, quality and value of said lands, streams, property, easement, franchise or rights of way so taken, and shall award to the owner or owners thereof just compensation for the property taken, injured or destroyed by the construction or enlargement of such

pipe lines, works and improvements; which compensation shall be paid or secured as hereinafter provided, before such taking, injury or destruction: *Provided*, That for any subsequent injury, taking or destruction of property, the owner or owners of the property taken, injured or destroyed, shall have the right to recover full compensation for such taking injury or destruction, and an action for any subsequent injury or taking or destruction of property, may be brought within the county in which the damages are sustained and the summons may be directed to the sheriff of the county in which the corporation defendant may have its principal place of business, and service may be made upon the president, secretary or other officer in charge of said principal office, to have the same effect as if the said corporation defendant was resident within the proper county, and make report thereof to the said court; and if any damages be awarded, and the report be confirmed by the said Court, judgment shall be entered thereon; and if the amount thereof be not paid within thirty days after the entry of such judgment, execution may then issue thereon, as in other cases of debt, for the sum so awarded. And the costs and expenses incurred shall be defrayed by the corporation; and each of said viewers shall be entitled to two dollars and fifty cents per day, for each day necessarily employed in the performance of the duties herein prescribed, to be paid by such corporation. In all cases when the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of such owner or owners, no such agreement can be made, either for lands, streams, waters, water rights, franchises, rights of way, the corporation shall tender a bond, with at least two sufficient sureties, to the parties claiming or entitled to any damages, or to the attorney or agent of any person absent, or to the guardian or committee of any one under legal incapacity, the condition of which shall be, that the said corporation will pay such amount of damages as the party shall be entitled to receive, after the same shall have been agreed upon by the parties, or assessed in the manner provided for by this Act: *Provided*, That in case the party or parties claiming damages refuse, or do not accept the bond tendered, the said corpora-

tion shall then give the party a written notice of the time when the same will be presented for filing in court, and thereafter the said corporation may present said bonds to the court of common pleas of the county where the lands, streams, waters, rivulets, roads, railroads, turnpike roads, canals or other highways are; and if the sureties and the amount of the bond be approved, the bond shall be filed in said Court, for the benefit of those interested, and recovery may be had thereupon for the amount of damages assessed, if the same be not paid or cannot be made by execution on the judgment in the issue formed to try the question. The viewers provided for in this section may be appointed before or after the entry for constructing said work; and after the filing of the bond herein before provided for, and upon the report of the said viewers, or any three of them being filed in said Court, either party, within thirty days thereafter may file his, her or their appeal from said report to said Court. After such appeal, either party may put the cause at issue in the form directed by said Court, and the same shall be tried by said Court and a jury, and after final judgment, either party may have a writ of error thereto from the Supreme Court, in the man-

ner prescribed in other cases; the said court shall have power to order what notices shall be given of the proceedings, and may make all such orders connected with the same, as may be deemed requisite; if any exceptions be filed, with any appeals, to the proceeding, the same shall be speedily disposed of, and if allowed, a new view shall be ordered; and if disallowed, the appeal shall proceed as before provided: *Provided, further*, That when the term "owner" is used in the foregoing section to this Act, or in this Act in reference to an effort to agree with, or to the tender of a bond to, or service of notice upon the owner of roads, railroads, turnpike roads, canals or other highways, the same shall be taken to mean the officers in charge of said road, railroad, turnpike road, canal or other public highways, on whom service of process could be made in any action at law or in equity: *Provided*, That all companies organized under this Act, shall have their terminus in Pennsylvania. Sec. 3, *Id.*

Duty to Furnish Gas to Consumers.

The transportation and supply of natural gas for public consumption is hereby declared to be a public use, and it shall be the duty of corporations, organized or provided for under this Act, to furnish to consumers along their lines and within their respective districts natural gas for heat or light or other purposes as the corporation may determine. Act 1897, p. 51; Purdon, p. 3223.

Abandoned Wells to Be Filled and Plugged.

Whenever any well shall have been put down on lands of any company authorized by this Act for the purpose of exploring for, or producing gas, upon abandoning or ceasing to operate the same the company shall, before drawing the casing, fill up the well with sand or rock sediment to the depth of at least twenty feet above the gas-bearing rock, and drive a round, seasoned, wooden plug, at least two feet in length, equal in diameter to the diameter of the well below the casing, to a point at least five feet below the bottom of the casing, and immediately after the drawing of the casing shall drive a round, wooden plug into the well at the point just below where the lower end of the casing shall have rested, which plug shall be at least three feet in length, tapering in form, and to be of the same diameter at the distance of eighteen inches from the smaller end of the diameter of the well below the point at which it is to be driven. After the plug has been properly driven there shall be filled in on top of the same sand or rock sediment to the depth of at least five feet. Sec. 20, Act 1885, p. 36; Purdon, p. 3227.

Penalty.

Any company which shall violate the proceedings of the preceding section shall be liable to a penalty of two hundred dollars, to be recovered as debts of like amount are by law recoverable. Sec. 21, Act 1885, p. 36; Purdon, p. 3227.

Adjoiners May Plug Wells.

Whenever any company shall neglect or refuse to comply with the provisions of this Act with regard to plugging wells, any owner of lands adjacent, or in the neighborhood of such unplugged well, may enter and take possession of said abandoned well and plug the same, as provided by this Act, at the expense of the company whose duty it may have been to plug the same. Sec. 22, Act 1885, p. 36; Purdon, p. 3227.

Natural Gas Companies May Deal in Fuel Gas.

SECTION 1. Be it enacted, etc., that corporations engaged in supplying natural gas under the provisions of an act of assembly, approved the 29th day of May, 1885, entitled "An Act to provide for the incorporation and regulation of natural gas companies," shall also have power to manufacture or purchase and to transport and supply manufactured fuel gas to the public, through their transportation and distribution lines to and into every district in which they are authorized to do business; *Provided however*, that such manufactured fuel gas shall not be supplied in any district not theretofore supplied with natural gas, where an existing corporation has the right to supply and is supplying in any such district, manufactured gas for light, heat or fuel purposes, or any of them, except with the consent of such corporation. Act 1917, p. 102.

The above sections 20, 21, 22 of the 1885 Act seem to cover only the plugging of wells sunk by corporations. The above Act of 1917 is a supplement to the same sections, and they make a useless distinction arising from their being found in one of the corporation Laws.

By Act of April 23, 1907, Purdon, 13th Ed. p. 7029, County Commissioners are authorized to sink gas wells for municipal supply.

TENNESSEE.

Casing Wells to Protect against Water.

Be it enacted by the General Assembly of the State of Tenn-

essee, That when any well shall be drilled for the production of petroleum oil, natural gas, salt water or mineral water, it shall be the duty of the owner thereof, before drilling said well into the oil and gas sand, to encase such well with good and sufficient wrought iron, steel, or metal casing in such manner as to exclude and shut out all surface water, salt water, or fresh water, and to prevent the same from reaching or penetrating said oil and gas sand. Sec. 1, Act, 1905, p. 789.

Abandoned Wells, How to Be Closed.

Be it further enacted, That it shall be the duty of any owner of any well drilled for any of the purposes mentioned in the first section of this Act, before abandoning or ceasing to operate the same and before drawing the casing therefrom, to fill up the well with sand or rock sediment to a depth of at least fifty feet above the top of the oil or gas-bearing sand or rock, and drive a round, seasoned wooden plug at least three feet in length, equal in diameter to the diameter of the well below the casing, to a point at least five feet below the bottom of the casing; and immediately after drawing the casing, except in regions where the well caves after the withdrawal of the casing shall drive a round, seasoned plug at a point just below where the lower end of the casing rested; which plug shall be at least three feet in length, tapering in form, and of the same diameter at the distance of below the point at which it is to be driven. After the plug has been properly driven, there shall be filled in on top of the same, eighteen inches from the smaller end as the diameter of the hole sand or rock sediment to the depth of at least fifty feet above the top of the oil or gas-bearing sand or rock. Sec. 2, *Id.*

Danger of Waste of Gas to Be Prevented.

Be it further enacted, That it shall be the duty of any owner of any well producing gas, to prevent the waste of said gas by escape and within the time hereinafter limited, to shut in and confine the same in said well, or in the pipe or pipe lines connected therewith. Said gas, with respect to any well heretofore drilled, shall be so shut in within ninety days after the

approval of this Act, and with respect to any well hereafter drilled or completed, shall be shut in within ninety days after the said well shall reach the lowest oil and gas sand defined or recognized in the gas or oil district in which said well is situated; but if any such well in the course of drilling shall pass through any oil and gas sand which produces gas above the said last or lowest oil and gas sand, then the drilling of said well to the last or lowest oil and gas sand shall be prosecuted with reasonable diligence, so that any waste of gas from the said upper sand shall not continue longer than shall be reasonably necessary. *Provided, however,* that this section of this Act shall not apply to any well producing both oil and gas from the same sand, or to any well while it is being operated as an oil well, or to any well drilled more than five years before the passage of this Act. Sec. 3, *Id.*

Adjoining Owners May Plug Wells.

Be it further enacted, That if the owner of any such well shall neglect or refuse to cause said well to be plugged or shut in pursuant to the provisions of the second and third sections of this Act for a period of thirty days after a written notice so to do (which notice may be served personally upon such owner, or may be posted in a conspicuous place at or near the well), it shall be lawful for the owner or operator of any adjacent or neighboring lands to enter upon the premises where said well is situated and cause the same to be plugged, if it be an abandoned well, or shut in if not abandoned, pursuant to the provisions hereof; and the reasonable cost and expense incurred in so doing shall be paid by the owner of said well and may be recovered as debts of like amount are by law recoverable. Sec. 4, *Id.*

"Owner" and Other Terms Defined.

Be it further enacted, That the term "owner," as herein used with reference to any well, shall mean and include each and every person, persons, copartnership, partnership, association or corporation owning, managing, operating, controlling, or possessing said well as principal or principals; and the terms "oil

and gas sand" or "sand" as herein used, shall mean and include any bed, seam, or stratum of rock, sand, or other material which produces, yields, or contains in quantity sufficient to be utilized, petroleum oil and natural gas, or either of them. Sec. 5, *Id.*

Penalty.

Be it further enacted, That any person or persons, co-partnership, partnership, association, or corporation violating any of the provisions of this Act shall be liable to a penalty of one hundred dollars, to be recovered with costs of suit in any civil action to be brought in the name of the State of Tennessee, in any Circuit Court, and such action may be brought at the instance and upon the relation of any citizen of the State. Sec. 6, *Id.*

Relief in Equity against Waste.

Be it further enacted, That aside from and in addition to the imposition of any penalties under this Act, it shall be the duty of any Chancery Court in the exercise of its equitable jurisdiction, to hear or determine any bill or bills in equity which may be filed to restrain the waste of natural gas in violation of this Act, and to grant relief by injunction or by other decrees or orders, in accordance with the principles and practice in equity. The complainant in such bill shall have sufficient standing to maintain the same if he shall aver and prove that he is interested in the lands situated within the distance of one mile from said well, either as an owner of such land in fee simple, or as an owner of leases thereof, or of rights therein for the production of oil and gas or either of them. Sec. 7, *Id.*

WEST VIRGINIA.

Casing against Water.

That when any well shall be drilled for the production of petroleum oil, natural gas, salt water or mineral water, it shall be the duty of the owner thereof, before drilling said well into the oil and gas sand, to encase such well with good and sufficient wrought iron, steel or metal casing in such manner as to exclude

and shut out all surface water, salt water or fresh water, and to prevent the same from reaching or penetrating said oil and gas sand. Sec. 1, Act 1891, ch. 106, 1897, ch. 58.

Plugging and Casing Abandoned Wells.

It shall be the duty of the owner of any well drilled for any of the purposes mentioned in the first section of this Act, before abandoning or ceasing to operate the same and before drawing the casing therefrom, to fill up the well with sand or rock sediment to a depth of at least fifty feet above the top of the oil or gas-bearing sand or rock, and drive a round, seasoned wooden plug, at least three feet in length, equal in diameter to the diameter of the well below the casing, to a point at least five feet below the bottom of the casing, and immediately after drawing the casing, except in regions where the well caves after the withdrawal of the casing, shall drive a round, seasoned wooden plug at a point just below where the lower end of the casing rested; which plug shall be at least three feet in length, tapering in form and of the same diameter at the distance of 18 inches from the smaller end, as the diameter of the hole below the point at which it is to be driven. After the plug has been properly driven there shall be filled in on the top of the same, sand or rock sediment to the depth of at least fifty feet above the top of the oil or gas-bearing sand or rock. Sec. 2., *Id.*

Prevention of Waste of Gas. Several Strata.

It shall be the duty of any owner of any well producing gas, to prevent the waste of said gas by escape, and within the time hereinafter limited, to shut in and confine the same in said well or in the pipes or pipe lines connected therewith. Said gas with respect to any well heretofore drilled shall be so shut in within ninety days after the approval of this Act, and with respect to any well hereafter drilled or completed, shall be shut in within ninety days after the said well shall reach the lowest oil and gas sand defined or recognized in the gas or oil district in which said well is situated; but if any such well in the course of drilling shall pass through any oil and gas sand which pro-

duces gas above the said last or lowest oil and gas sand, then the drilling of said well to the last or lowest oil and gas sand shall be prosecuted with reasonable diligence, so that any waste of gas from the said upper sand shall not continue longer than shall be reasonably necessary: *Provided, however,* That this section of this Act shall not apply to any well producing both oil and gas from the same sand, or to any well while it is being operated as an oil well. Sec. 3. *Id.*

When Adjacent Owner or Operator May Plug.

If the owner of any such well shall neglect or refuse to cause said well to be plugged or shut in pursuant to the provisions of the second and third sections of this Act for a period of twenty days after a written notice so to do (which notice may be served personally upon such owner, or may be posted in a conspicuous place at or near the well), it shall be lawful for the owner or operator of any adjacent or neighboring lands to enter upon the premises, where said well is situated and to cause the same to be plugged if it be an abandoned well, or shut in if not abandoned, pursuant to the provisions hereof; and the reasonable cost and expense incurred in so doing shall be paid by the owner of said well, and may be recovered as debts of like amount are by law recoverable. Sec. 4 *Id.*

Owner and Sand Defined.

The term "owner," as herein used, with reference to any well, shall mean and include each and every person, persons, copartnership, partnership, association or corporation owning, managing, operating, controlling or possessing said well as principal or principals, or as lessees, contractors, employees, or agents of such principal or principals; and the terms "oil and gas sand," or "sand," as herein used, shall mean and include any bed, seam, or stratum of rock, sand or other material which produces, yields, or contains in quantity sufficient to be utilized, petroleum oil and natural gas or either of them. Sec. 5. *Id.*

\$100 Penalty.

Any person or persons, copartnership, partnership, association or corporation violating any of the provisions of this Act shall be liable to a penalty of one hundred dollars, to be recovered with costs of suit in a civil action to be brought in the name of the State of West Virginia, in any circuit court, and such action may be brought at the instance and upon the relation of any citizen of the State. Sec. 6. *Id.*

Equity May Enjoin Waste.

Aside from and in addition to the imposition of any penalties under this Act, it shall be the duty of any circuit court in the exercise of its equitable jurisdiction, to hear and determine any bill or bills in equity which may be filed to restrain the waste of natural gas in violation of this Act, and to grant relief by injunction or by other decrees or orders, in accordance with the principles and practice in equity. The plaintiff in such bill shall have sufficient standing to maintain the same if he shall aver and prove that he is interested in the lands situated within the distance of one mile from said well, either as owner of such land in fee simple, or as an owner of leases thereof or of rights therein for the production of oil and gas, or either of them. Sec. 7. *Id.*

Limitation to Protect Oil Lessee.

That any person or persons, in peaceable possession of land, claiming title under a lease of the same for the purpose of operating for oil or minerals, and who may have continuously remained in such possession for the space of three years, and have bored for, and in good faith expended money in such boring and operating, shall be entitled to plead such facts in bar, and said facts shall be a bar to any action at law or in equity, instituted to establish title to recover possession of said lease, or to recover the profits received therefrom: *Provided*, That nothing in this Act contained shall be so construed as to authorize a tenant to set up as a bar to a recovery an adversary possession against his landlord, and that this Act shall not affect any suit brought with-

in twelve months after the passage of this Act. Code 1906, § 3498.

Pipe Line Companies May Condemn. Common Carriers.

That a company organized for the purpose of transporting natural gas, petroleum or water, necessary for use in carrying out the provisions of this Act in piping and transporting natural gas and petroleum or for boring for the same, through tubing and pipes, may enter upon any land for the purpose of examining and surveying a line for its tubing and pipes, and may appropriate so much thereof as may be deemed necessary for the laying down of such tubing and piping, and for the erection of tanks and the location of stations along such line, and the erection of such buildings as may be necessary for the purpose aforesaid; such appropriations shall be made and conducted in accordance with the law providing for compensation to the owners of private property taken for public use: *Provided*, That no dwelling-house, yard or garden, shall be taken for such purpose, nor shall any oil tank, gas or oil pipe line be erected or laid within 100 feet of any occupied dwelling-house without the consent of the owner thereof. And so far as the rights of the public therein are concerned, the county commissioners, as to public roads, and the council of any municipal corporation, as to streets and alleys, in their respective jurisdiction may, subject to such regulations and restrictions as they may prescribe, grant to such company the right to lay such tubing and piping therein: *Provided, however*, The right to appropriate for any of the purposes herein above specified shall not include or extend to the erection of any tank, station or building, or lands thereof, or to more than one continuous line of pipe or tubing, or land therefor, in or through a municipal corporation without the council first consents thereto; and all excavations shall be well filled by such company and so kept by it, in all cases. Such company shall, for the purpose of transporting natural gas, oils and water, be considered and held to be a common carrier, and subject to all the duties and liabilities of such carrier under the laws of this State. Act 1891, ch. 113, Code 1906, sec. 2229.

ACT REGULATING TRANSPORTATION OF OIL

Pipe Lines and Storage Companies Subject to This Act.

1. Every person, corporation or company now engaged, or who shall hereafter engage or continue in the business of transporting or storing petroleum, by means of pipe line or lines or storage by tanks, shall be subject to the provisions of this Act and shall conduct such business in conformity herewith; and the word "company" whenever used in this Act shall be construed to include persons and corporations. Act 1879, ch. 27; Act 1891, ch. 44. Code, sec. 2829.

Compelled to Make Connections and Accept Deliveries.

2. Any company heretofore or hereafter organized for the purpose of transporting petroleum or other oils or liquids by means of pipe line or lines, shall be required to accept all petroleum offered to it in merchantable order in quantities of not less than two thousand gallons at the wells where the same is produced, making at its own expense all necessary connections with the tanks or receptacles containing such petroleum, and to transport and deliver the same at any delivery station, within or without the State, on the route of its line of pipes which may be designated by the owners of the petroleum so offered. *Id.* § 2830.

Oil to Be Inspected, Graded and Measured.

3. All petroleum of a gravity of thirty-five degrees Baume or under, at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipe line or lines, shall, before the same is transported, as provided by section 2 of this Act, be inspected, graded and measured at the expense of the pipe line company, and the company accepting the same for transportation shall give to the owner thereof a receipt stating therein the number of barrels or gallons so received, and the grade, gravity and measurement thereof, and within a reasonable time thereafter, upon demand of said owner or his assigns, shall deliver to him at the point of delivery a like quantity and grade

or gravity of petroleum in merchantable condition as specified in said receipt; except that the company may deduct for waste one per centum of the amount of petroleum specified in such receipt. *Id.* § 2831.

Rates Allowed for Transportation.

4. The charge for receiving, transporting and delivering petroleum of the gravity of thirty-five degrees Baume or under, at a temperature of sixty degrees Fahrenheit, by means of pipe line or lines shall not exceed one cent per barrel of forty-two gallons per mile; Provided, That if said rate should amount for the whole distance transported to less than ten cents per barrel, then the sum of ten cents per barrel may be charged; and, provided, that if the distance be over twenty miles and not more than thirty miles, one-half cent per barrel may be charged for every mile over twenty miles; and provided, further, that if the distance be over thirty miles, the maximum charge shall not exceed twenty-five cents. *Id.* § 2832.

Storage and Demurrage. Allowance for Evaporation.

5. Any company engaged in storing petroleum of a gravity of thirty-five degrees Baume or under, at a temperature of sixty degrees Fahrenheit, by means of tanks, shall be permitted to charge for storage one cent per barrel per month or part of a month, unless the same is removed within fifteen days from the date when said oil is received into the custody of such company, and shall be allowed for evaporation and waste one-half of one per centum of the oil per month unless removed within thirty days from the date of the receipt of such petroleum; but no company engaged in the business of storing petroleum of the gravity of thirty-five degrees Baume or under, at a temperature of sixty degrees Fahrenheit, shall charge for storage any amount in excess of that authorized by this section. *Id.* § 2833.

Inspection and Measurement Before Carriage. Allowance for Waste. Loss from Overflow.

6. All petroleum of a gravity exceeding thirty-five degrees

Baume at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipe line or lines, shall be inspected and measured at the expense of the company transporting the same, before the same is transported; and the company accepting the same for transportation, shall give to the owner thereof, or to the person in charge of the well or wells from which such petroleum has been produced and run, a ticket signed by its gauger, stating the number of feet and inches of petroleum which were in the tank or receptacle containing the same before the company began to run the contents of said tank, and the number of feet and inches of petroleum which remained in the tank after said run was completed; and all deductions made for water, sediment or the like, shall be made at the time such petroleum is measured; and within reasonable time thereafter said company shall, upon demand, deliver from the petroleum in its custody to the owner thereof, or to his assignee, at such delivery station on the route of its line of pipes as he may elect, a quantity of merchantable petroleum, equal to the quantity of petroleum run from said tank, or receptacle, which shall be ascertained by computation; except that the said company transporting said petroleum may deduct for evaporation and waste two per centum of the amount of petroleum so run, as shown by said run ticket; and except that in case of loss of any petroleum while in the custody of said company caused by fire, lightning, storm or other like unavoidable cause, such loss shall be borne pro rata by all the owners of such petroleum at the time thereof. But said company shall be liable for all petroleum that is lost while in its custody by the bursting of pipes or tanks or by leakage from pipes or tanks; and it shall also be liable for all petroleum lost from tanks at the wells where produced before the same has been received for transportation, if such loss be due to faulty connections made to said tanks; and said company shall be liable for all petroleum lost by the overflow of any tanks with which pipe line connections have been made, if such overflow be due to the negligence of such company; and for all the petroleum lost by the overflow of any tanks with which pipe line connections should have been made under the provisions of this

Act, but were not so made by reason of negligence or delay on the part of said company. *Id.* § 2834.

Statutory Charges Fixed.

7. Any company engaged in transporting petroleum of a gravity exceeding thirty-five degrees Baume at a temperature of sixty degrees Fahrenheit, by means of pipe line or lines, may charge for receiving, transporting and delivering such petroleum not to exceed twenty cents per barrel for each barrel of forty-two gallons: Provided, however, if where the point of delivery is without this State, more than twenty cents per barrel be charged, then there shall be charged no greater sum than ten cents per barrel for receiving such oil and transporting the same that part of the distance which is within this State. Act 1891, ch. 44; Code § 2835.

Idem. When Demurrage Begins. 2 Per Cent Limit to Deductions.

8. Any company engaged in transporting or storing petroleum of a gravity exceeding thirty-five degrees Baume at a temperature of sixty degrees Fahrenheit, by means of pipe line or lines and tanks, shall make no charge for storing said petroleum until after the expiration of the month following that in which the oil was run and received into custody. But it may charge for storing said petroleum of a gravity exceeding thirty-five degrees Baume at a temperature of sixty degrees Fahrenheit, for every day after the expiration of the month following that in which said oil shall have been run and received into custody, not to exceed one-fortieth of one cent per barrel of forty-two gallons for each day thereafter said oil shall continue to remain in its custody. Any such company shall make no charge for water, sediment, waste and the like in transporting or storing any petroleum after the same has been gauged or measured, before the run of same is made, except the two per centum for waste and evaporation hereinbefore mentioned. *Id.* § 2836.

Discrimination and Rebates Disallowed.

9. No company engaged in transporting or storing petroleum by means of pipe line or lines and tanks shall charge, demand or receive from any corporation, company, association, person or persons a greater or less rate for the transportation or storage of petroleum that it charges, receives or demands from any other corporation, company, association, person or persons for the transportation or storage of petroleum of like gravity; and any shift, device or subterfuge made or attempted for the purpose of avoiding the provisions of this section shall be void. Act. 1879, chap. 27; 1891 ch. 44, § 2837.

Fine and Damages for Overcharges.

10. Any company, its officers or agents, willfully violating any of the provisions of sections two, three, four, five, six, seven, eight or nine, of this Act, or charging for any of the services provided for in any of said sections, an amount in excess of that authorized by said sections, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars, nor more than one thousand dollars, and shall moreover be liable to the party aggrieved for all damages sustained by him by reason of such excessive charges. Act, 1891, ch. 44, § 2838.

Lien for Carriage and Storage.

11. Any company engaged in transporting or storing petroleum, shall have a lien upon said petroleum until all charges for transporting and storing said petroleum are paid. Act 1879, ch. 27; 1891 ch. 44, § 2839.

Pipe Line Receipt Negotiable.

12. Accepted orders and certificates for petroleum, issued by any company engaged in the business of transporting and storing petroleum in this State, by means of pipe line or lines and tanks, shall be negotiable, and may be transferred by endorsement, either in blank or to the order of another, and any

person to whom the said accepted orders and certificates shall be so transferred, shall be deemed and taken to be the owner of the petroleum therein specified. *Id.* § 2840.

Delivery of Oil Not to Be Anticipated. Precautions against Duplicate. Cancellations.

13. No receipt, certificate, accepted order or other voucher, shall be issued or put in circulation, nor shall any order be accepted or liability incurred for the delivery of any petroleum, crude or refined, unless the amount of such petroleum represented in or by such receipt, certificate, accepted order, or other voucher or liability, shall have been actually received by and shall then be in the tanks and lines, custody and control of, the company issuing or putting in circulation such receipt, certificate, accepted order or voucher, or written evidence of liability. No duplicate receipt, certificate, accepted order or other voucher shall be issued or put in circulation, or any liability incurred for any petroleum, crude or refined, while any former liability remains in force, or any former receipt, certificate, accepted order or other voucher shall be outstanding and uncanceled, except such original paper shall have been lost, in which case a duplicate plainly marked "duplicate" upon the face, and dated and numbered as the lost original was dated and numbered, may be issued. No receipt, voucher, accepted order, certificate or written evidence of liability of such company on which petroleum, crude or refined, has been delivered, shall be re-issued, used or put in circulation. No petroleum, crude or refined, for which a receipt, voucher, accepted order, certificate or liability incurred, shall have been issued or put in circulation, shall be delivered, except upon the surrender of the receipt, voucher, order or liability representing such petroleum, except upon affidavit of loss of such instrument made by the former holder thereof. No duplicate receipt, certificate, voucher, accepted order or other evidence of liability, shall be made, issued or put in circulation until after notice of the loss of the original, and of the intention to apply for a duplicate thereof, shall have been given by advertisement over the signature of the owner thereof in at least four successive issues of a daily or weekly newspaper

published in the county where such duplicate is to be issued. Every receipt, voucher, accepted order, certificate or evidence of liability, when surrendered, or the petroleum represented thereby delivered, shall be immediately cancelled by stamping and punching the same across the face in large and legible letters with the word "cancelled," and giving the date of such cancellation; and it shall then be filed and preserved in the principal office of such company for the period of six years. *Id.* § 2841.

Removal of Oil without Written Consent of Owner.

14. No company, its officers or agents or any person or persons engaged in the transportation or storage of petroleum, crude or refined, shall sell or encumber, ship, transfer, or in any manner remove or procure or permit to be sold, encumbered, shipped, transferred, or in any manner removed from the tanks or pipes of said company engaged in the business aforesaid, any petroleum, crude or refined, without the written order of the owner or owners thereof. Act 1891, ch. 44, § 2842.

Verified Monthly Statements to Be Posted.

15. Every company now or hereafter engaged in the business of transporting by pipe lines, or storing crude or refined petroleum in this State, shall, on or before the tenth day of each month, make or cause to be made and posted in its principal business office in this State in an accessible and convenient place for the examination thereof by any person desiring such examination, and shall keep so posted continuously until the next succeeding statement is so posted, a statement plainly written or printed, signed by the officer, agent, person or persons having charge of the pipes and tanks of said company, and also by the officer or officers, person or persons, having charge of the books and accounts thereof, which statement shall show in legible and intelligent form the following details of the business:

First.—How much petroleum, crude or refined, was in the actual and immediate custody of such company at the beginning and close of the previous month, and where the same was

located or held; describing in detail the location and designation of each tank or place of deposit, and the name of its owner.

Second.—How much petroleum, crude or refined, was received by such company during the previous month.

Third.—How much petroleum, crude or refined, was delivered by such company during the previous month.

Fourth.—For how much petroleum, crude or refined, such company was liable for the delivery or custody of to other corporations, companies or persons at the close of the month.

Fifth.—How much of such liability was represented by outstanding receipts or certificates, accepted order or other vouchers, and how much was represented by credit balances.

Sixth.—That all the provisions of this Act have been faithfully observed and obeyed during the said previous month.

The statement so required to be made shall also be sworn to by said officers, agent, person or persons before some officer authorized by law to administer oaths, which oath shall be in writing, and shall assert the familiarity and acquaintance of the deponent with the business and condition of such company, and with the facts sworn to, and that the statements made in the said report are true. *Id.* § 2843. .

Oil on Hand to Tally with Its Vouchers.

16. All amounts in the statements required by this Act, when the petroleum is handled in bulk, shall be given in barrels and hundredths of barrels reckoning forty-two gallons to each barrel, and when such petroleum is handled in barrels or packages, the number of such barrels or packages shall be given, and such statements shall distinguish between crude and refined petroleum, and give the amount of each. Every company engaged in the business aforesaid, shall at all times have in their pipes and tanks an amount of merchantable oil equal to the aggregate of outstanding receipts, certificates, accepted orders, vouchers, acknowledgments, evidences of liability and credit balances, on the books thereof. *Id.* § 2844.

Fine and Imprisonment for Unauthorized Vouchers.

17. Any company, its officers or agents, who shall make or cause to be made, sign or cause to be signed, issue or cause to be issued, put in circulation or cause to be put in circulation, any receipt, accepted order, certificate, voucher or evidence of liability, or shall sell, transfer or alter the same, or cause such sale, transfer or alteration, contrary to the provisions of this Act, or shall do or cause to be done, any of the acts prohibited by the thirteenth section of this Act, or omit to do any of the acts by said section directed, shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of not exceeding one thousand dollars, and undergo imprisonment not less than ten days nor exceeding one year. *Id.* § 2845.

Removal of Oil without Written Consent.

18. Any company, its officers, or agents, who shall sell, encumber, transfer or remove, or cause or procure to be sold, transferred or removed from the tanks or pipes of such company, any petroleum, crude or refined, without the written consent of the owner or owners thereof, shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of one thousand dollars and undergo an imprisonment of not less than ninety days and not exceeding one year. *Id.* § 2846.

Unconscionable Fines for Failure to Make Reports.

19. Any company engaged in the business of transporting by pipe lines or storing petroleum, crude or refined, and each and every officer or agent of such company who shall neglect or refuse to make the report and statement required by the fifteenth section of this Act, within the time and the manner directed by said section, shall forfeit and pay the sum of one thousand dollars, and in addition thereto the sum of five hundred dollars for each day after the tenth day of the month that the report and statement required by said section fifteen shall remain unposted as therein directed. *Id.* § 2847.

Oil Owners May Demand Showing as to Stock on Hand.

20. The holder of any receipts, certificates, accepted orders, or other vouchers or evidences of liability, or the owners of oil in the custody of any such company described and referred to in this Act, to an amount not less in the aggregate than ten thousand barrels of petroleum, crude or refined, may at any time present their petition to the circuit court of any county wherein such company may be engaged in the business or have its principal office, or to any judge of said court in vacation, setting forth under oath, their ownership as aforesaid and desire for the appointment of examiners for the purposes of this section; and upon such petitioners giving bonds to be approved by the court or by the judge granting the order, that they will pay all expenses and costs that may accrue in the proceedings, the court, or any judge thereof, in vacation, shall forthwith appoint such number of impartial, disinterested and expert persons as may be asked for in said petition, as examiners, and shall fix the amount of their compensation; and the court or judge by order, shall direct and empower such examiners to immediately inspect and measure all the petroleum, crude or refined, in the custody of any such company named in the said petition, on the day of such inspection, and to examine the books of said company relating to the issue and cancellation of receipts, certificates, accepted orders, vouchers, or evidences of liability, and to its open accounts with persons, companies or corporations with whom it deals in the receipt and delivery of crude or refined petroleum. Such examiners when so appointed shall each immediately be sworn before any authorized officer to perform his duties with fidelity and according to law, which oath shall be reduced to writing, signed and filed with the clerk, and they shall then make immediate inspection, examination and measurement, as required by said petition and order and by this Act. And it shall be the duty of each and every such company, its officers, agents and employees, to give immediately upon request of any such authorized examiners, all the information demanded in said petition and required by this act to be reported, and also full access to the offices, tanks, pipes, books and accounts of such company. Upon the completion of such inspection, meas-

urement and examination, it shall be the duty of the examiner or examiners, or in the event of death, resignation, declination or inability to act of any of them, the others, or any of them within ten days after their appointment to make to the court appointing them, a written, signed and sworn report of such examination, inspection and measurement, and file the same of record with the clerk thereof, which report shall show:

First.—How much merchantable and also how much unmerchantable petroleum, crude or refined, they found in the tanks and lines of such company, and where the same was located or held by description of tanks.

Second.—For the custody or delivery of how much crude or refined petroleum they found such company to be liable at the same date.

Third.—How much of such liability was represented by outstanding receipts, accepted orders, certificate, vouchers or evidence of liability, and how much by credit balances. *Id.*, § 2848.

False Report or Corrupt Conduct of Examiner.

21. Any examiner so appointed as aforesaid, who shall make any false examination, inspection, measurement or report, or shall make known directly or indirectly to any person any information he may become possessed of in the course of his examination, inspection or measurement, except by means of his report made and filed in accordance with this Act, or who shall receive directly or indirectly any fee, reward or benefit, or the promise of any fee, reward or benefit, other than that provided by this Act, for the performance or non-performance of any duty or thing contemplated by this Act, or connected with his said employment, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of one thousand dollars, and may at the discretion of the court, be confined in jail not to exceed one year. *Id.* § 2849.

Refusal to Furnish Information a Misdemeanor.

22. Any officer, agent, manager, superintendent, or employee of any company engaged in the transportation by pipe lines of

petroleum, crude or refined, or the storage thereof, who shall refuse or neglect after demand made to give to any authorized examiner full and free access to any and all offices, pipes, tanks, accounts, books and vouchers required by him in the pursuance of his appointment and this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not exceeding one thousand dollars, and may at the discretion of the Court be confined in jail not to exceed one year. *Id.*, § 2850.

NATURAL GAS DISTRIBUTION AND EXPORTATION

¹ An Act in relation to persons, firms, and corporations engaged in furnishing, or required by law to furnish, natural gas for public use within this State, to provide remedies for the enforcement of this Act and penalties and punishment for violations thereof, and to extend the jurisdiction of the public service Commission and of the Courts of this State with respect thereto. Approved Feb. 17, 1919, Acts p. 273.

Obscure Introduction or Preamble.

Sec. 1. That every person engaged in furnishing, or required by law (whether statutory or common law) to furnish, natural gas for public use, or for the use of the public, or any part of the public, whether for domestic, industrial or other consumption, within this State, shall to the extent of his supply of said gas produced in this State, (whether produced by such person or by any other person), furnished for public use within the territory of this State, and for the use of the public and every part of the public within the Territory of this State, in or from which such gas is produced, or through which said gas is transported, or which is served by such person, a supply of natural gas reasonably adequate for the purposes, whether domestic, industrial, or otherwise, for which natural gas is consumed or

¹ This extremely obscure Act, apparently intended to discriminate against all except local interests in natural gas is the subject of a formal remonstrance by joint resolution of the Pennsylvania legislature on page 87 of the 1919 Session Laws of that State.

desired to be consumed by the public, or any part of the public, within said Territory in this State, and for which said consumer or consumers therein shall apply and be ready and willing to make payment at lawful rates.

**Power of Public Service Commission to Compel Supply of Gas.
And to Compel Connections. Proviso.**

Sec. 2. That in case any person engaged in furnishing, or required by law (whether statutory or common law) to furnish, natural gas for public use within this State, or for the use of the public or any part of the public within this State, shall have a production or supply of natural gas which is, or probably will be, insufficient to furnish for such use, (for the purposes, whether domestic, industrial or otherwise, for which natural gas is consumed by the public or any part of the public), within the Territory in this State served by such person, then and in that event the public service Commission shall have authority, and the same is hereby conferred on it, upon the application of any such person or any of his consumers within this State and after due hearing upon notice and proof to the satisfaction of the Commission that public convenience and necessity so require, to order any other person engaged in furnishing, or required by law (whether statutory or common law) to furnish, natural gas for public use within this State, and producing or furnishing natural gas for public use in said Territory or transporting the same through said Territory, to furnish to such person having such insufficient production or supply, natural gas for the purpose of supplying such deficiency, at and during such times, upon and at such just and reasonable terms, conditions and rates, and in such amounts, as the Commission shall prescribe. And whenever, after such hearing upon notice and proof, the Commission shall determine that public convenience and necessity so require, the Commission shall have authority to provide for and compel the establishment of a reasonable physical connection or connections, between the lines, pipes or conduits of such person having such excess supply of gas and the lines, pipes or conduits of the person having such deficiency of supply, and to require the laying and construction of such reasonable

extensions of lines, pipes or conduits as may be necessary for the establishment of such physical connection or connections, and to ascertain, determine and fix the just and reasonable terms and conditions of such connection or connections, including just and reasonable rules and regulations and provision for the payment of the costs and expense of making the same or for the apportionment of such cost and expense as may appear just and reasonable. *Provided*, however, that no person shall, by virtue of this section, be ordered to furnish natural gas to any other person so engaged in furnishing, or required by law to furnish, natural gas for public use, except to the extent that the person so ordered to furnish natural gas shall, at the time, have a production or supply of natural gas in excess of the quantity sufficient to furnish a reasonably adequate supply to his consumers within this State; nor shall any person, by virtue of this section, be ordered to furnish natural gas to any other person so engaged in furnishing or required by law to furnish, natural gas for public use in a Territory within this State, if and when the said person having said excess shall, to the extent of such excess, be ready and willing to furnish, and within such time as the Commission shall prescribe shall actually furnish to the consumers within said Territory a reasonably adequate supply of natural gas.

Prior Public Service Commission Acts.

Sec. 3. That insofar as the same shall not be in conflict with this Act, all of the authority, powers, jurisdiction and duties conferred and imposed on the Public Service Commission by the Act entitled, "An Act to create a Public Service Commission and to prescribe its powers and duties, and to prescribe penalties for the violations of the provisions of this Act," passed February twenty-first, one thousand nine hundred and thirteen, as amended by the Act entitled, "An Act to amend and re-enact sections one, two, three, four, five, nine, ten, fourteen, fifteen and twenty-two, of chapter nine of the Acts of one thousand nine hundred and thirteen, creating a Public Service Commission, prescribing its powers and duties, and penalties for violation of the provisions of said chapter, and to add thereto six sections

to be known as sections twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, enlarging the powers and duties of said Public Service Commission, prescribing additional penalties and giving to the Commission power to punish for contempt," passed February tenth, one thousand nine hundred and fifteen, are hereby conferred and imposed on the Public Service Commission in respect to the subject matter of this Act, or any part thereof.

Injunction, Mandamus and Other Relief.

Sec. 4. That in case of violation of any provision of this Act any person aggrieved or affected thereby may complain thereof to the Public Service Commission in like manner, and thereupon such procedure shall be had, as is provided in respect to other complaints to or before said Commission, and all such proceedings and remedies may be taken or had for the enforcement or review of the order or orders of said Commission, and for the punishment of the violation of such order or orders, as are provided by law in respect to other orders of said Commission. In case of the violation of any provision of this Act, the Public Service Commission, or any person aggrieved or affected by such violation, in his own name, may apply to any Court of competent jurisdiction by a bill for injunction, petition for writ of mandamus or other appropriate action, suit or proceeding, to compel obedience to and compliance with this Act, or to prevent the violation of this Act, or any provision thereof, pending the proceedings before said Commission, and thereafter until final determination of any action, suit or proceeding for the enforcement or review of the final order of said Commission; and such Court shall have jurisdiction to grant the appropriate order, judgment or decree in the premises.

Fine and Imprisonment.

Sec. 5. That if any person subject to the provisions of this Act shall fail or refuse to comply with any requirement of the Commission hereunder, such person shall be subject to a fine of not less than one hundred dollars nor more than five hundred

dollars for each offense; and such person, or the officers of the corporation, where such person is a corporation, may be indicted for their failure to comply with any requirement of the Commission under the provisions of this Act, and upon conviction thereof, may be fined not to exceed five hundred dollars, and in the discretion of the Court, confined in jail not to exceed thirty days. Every day during which any person, or any officer, agent or employee of such person, shall fail to observe and comply with any order or direction of the Commission, or to perform any duty enjoined by this Act, shall constitute a separate and distinct violation of such order or direction of this Act, as the case may be.

Civil Remedy. Defendant Compelled to Criminate Himself.

Sec. 6. That any person claiming to be damaged by any violation of this Act may bring suit in his own behalf for the recovery of the damage from the person or persons so violating the same in any circuit Court having jurisdiction. In any such action the Court may compel the attendance of the person or persons against whom said action is brought, or any officer, director, agent or employee of such person or persons, as a witness, and also require the production of all books, papers and documents which may be useful as evidence, and in the trial thereof such witness may be compelled to testify, but any such witness shall not be prosecuted for any offense concerning which he is compelled hereunder to testify.

"Person" Defined.

Sec. 7. That the word "person" within the meaning of this Act shall be construed to mean, and to include, persons, firms and corporations.

Constitutionality Clause.

Sec. 8. That the sections, provisions and clauses of this Act shall be deemed separable each from the other, and also in respect to the persons, firms, corporations and consumers mentioned therein or affected thereby, and if any separable part of

this Act be, or be held to be unconstitutional or for any reason invalid or unenforceable, the remaining parts thereof shall be and remain in full force and effect.

Repeal.

Sec. 9. That all Acts and parts of Acts in conflict with this Act are hereby repealed.

WYOMING.

Ten Days Allowed to Stop Waste.

It shall be unlawful for any person or corporation having possession or control of natural gas or oil well, whether as a contractor, owner, lessee, agent or manager, to allow or permit the flow of gas or oil from any such well to escape into the open air, without being confined within such well or proper pipes, or other safe receptacle for a longer period than ten (10) days next after gas or oil shall have been struck in such well. And thereafter all such gas or oil shall be safely and securely confined in such well pipes or other safe and proper receptacles. Sec. 1, Act 1913, p. 37. Approved Feb. 21.

Abandoned Wells, How Plugged. Shot Wells.

Whenever any well shall have been sunk for the purpose of obtaining natural gas or oil or exploring for the same, and shall be abandoned or cease to be operated for utilizing the flow of gas or oil therefrom, it shall be the duty of any person or corporation having the custody or control of such well at the time of such abandonment or cessation of use, and also of the owner or owners of the land wherein such well is situated, to properly and securely stop and plug the same as follows: If such well has not been "shot" there shall be placed in the bottom of the hole thereof a plug of well seasoned pine wood, the diameter of which shall be within one-half inch as great as the hole of such well, to extend at least three feet above the salt water level, where salt water has been struck; where no salt water has been

struck such plug shall extend at least three feet from the bottom of the well. In both cases such wooden plugs shall be thoroughly rammed down and tightened by the use of drilling tools. After such ramming and tightening the hole of such well shall be filled on top of such plug with finely broken stone or sand, which shall be placed and well rammed to a point at least four feet above the gas or oil-bearing rock; on top of this stone or sand there shall be placed another wooden plug at least five feet long with diameter as aforesaid, which shall be thoroughly rammed and tightened. In case such well shall have been "shot" the bottom of the hole thereof shall be filled with a proper and sufficient mixture of sand stone and dry cement, so as to form a concrete up to a point at least eight feet above the top of the gas or oil-bearing rock or rocks and on top of this filling shall be placed a wooden plug at least six feet long, with a diameter as aforesaid, which shall be properly rammed as aforesaid. Sec. 2, *Id.*

Proof of Plugging to Be Recorded.

Whenever any person, persons or corporation having abandoned or ceased operating any well or wells, such person or corporation shall file with the County Clerk of the county in which such well or wells are located, a sworn statement setting out the manner in which such well or wells have been plugged and the time that same were plugged, and the location of said well or wells. Said statements shall be sworn to by at least two persons who shall have assisted in the actual work of so plugging said well or wells. Sec. 3, *Id.*

Fine for Violation.

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and be punishable by a fine of not more than five hundred dollars (\$500.00) and not less than one hundred dollars (\$100.00) in the discretion of the Court, and all such fines when so collected shall be paid into the treasury of the county. Sec. 4, *Id.*

Adjacent Parties May Plug at Owners Cost.

Sec. 5. Whenever any person or corporation in possession or control of any well in which natural gas or oil has been found shall fail to comply with the provisions of this chapter, any person or corporation lawfully in possession of lands situated adjacent to or in the vicinity or neighborhood of such well may enter upon the lands upon which such well is situated and take possession of such well from which gas or oil is allowed to escape in violation of the provisions of section 1 hereof, and pack and tube such well and shut in and secure the flow of gas or oil, and maintain in a civil action in any Court of competent jurisdiction in this State against the owner, lessee, agent or manager of said well, and each of them jointly and severally to recover the cost and expense of such tubing and packing, together with attorney's fees and costs of suit. This shall be in addition to the penalties provided for by section 4 hereof. Sec. 5, *Id.*

TAX ACT**Gross Product of Well to Be Assessed.**

The gross product of all mines and mining claims from which gold, silver and other precious metals, soda, saline, coal, petroleum or other crude or mineral oil, or natural gas, or other valuable deposit is, or may hereafter be produced, while the same are being worked or operated, but not while the same are simply in the course of development, shall be returned by the owner, owners, lessee or operator thereof for assessment for taxation, assessed for taxation, and taxed in the manner provided for in this chapter, and such tax shall be in addition to any tax which may be assessed upon the surface improvements of such mines or mining claims, and in lieu of taxes upon the land of such claims while the same are being worked or operated. Sec. 1, Act of 1917, p. 9, amending Comp. Stat. § 2449.

Owner to Make Report of Product.

The owner, owners, lessee or operator of mines or mining claims from which gold, silver and other precious metal, soda,

saline, coal, petroleum or other crude or mineral oil, or natural gas, or other valuable deposits is produced, but not while the same are simply in the course of development, shall, not later than the second Monday in January in each and every year, file with the state board of equalization a sworn assessment schedule statement setting forth the gross product in tons, gallons or thousands of cubic feet, as the case may be, of such mine or mineral claim during the calendar year expiring immediately preceding the first day of January of the then current year. If the return aforesaid be not received by the second Monday in January, as herein provided for [,] or if received and the State board of equalization shall believe that the return is not full, complete and correct, it shall be the duty of said board to proceed to obtain the facts and information aforesaid in any manner that may appear most likely to secure the same. Sec. 2, *Id* amending Comp. Stat. § 2450.

State Board to Fix the Valuation.

The State board of equalization shall at least ten days before the date fixed for making assessment, classify and prescribe and fix the valuation, each year, for the assessment of the gross product, in tons, gallons or thousands of cubic feet, as the case may be, of all mines or mining claims from which gold, silver or other precious mineral, soda saline, coal petroleum or other crude or mineral oil, or natural gas, or other valuable deposits are produced. Sec. 3, amending Comp. Stat. § 2451.

STATE GEOLOGIST.

State Geologist to Be Appointed.

Sec. 208. There shall be a State geologist of the State of Wyoming, who shall be appointed by the governor by and with the consent of the Senate. He shall hold his office for the term of six years or until his successor shall have been appointed and qualified. Sec. 1, Act 1901, chap. 45.

Oath and Bond.

Sec. 209. Before entering upon the duties of his office, the State geologist so appointed as hereinbefore provided, shall take the oath required by the Constitution of this State and shall give a bond to the State of Wyoming with sureties to be approved by the governor in the sum of two thousand dollars, conditioned for the faithful performance of the duties of his office. L. 1901, ch. 45, § 2.

Removal from Office.

Sec. 210. The governor shall have the power to remove from office any person appointed to the position of State geologist for cause. The grounds for which shall be in writing and filed in the office of the Secretary of State. L. 1901, ch. 45, § 3.

General Duties.

Sec. 211. It shall be the duty of the State geologist to make examinations and reports on any State or school lands when so requested by the State Land Board or the State School Land Board and to make a written report concerning the geology of any lands in which the State of Wyoming is or may hereafter become interested and on such other matters as the respective State boards having to do with State lands or State school lands may desire information upon. Such reports as provided for in this section shall be in writing and filed with the Commissioner of Public lands. He shall be charged with the duty of enforcing all of the laws of the State of Wyoming relating to the oil industry. It shall be his further duty to perform such other Acts as are provided by the laws of the State of Wyoming relating to the Oil and Mineral Deposits, (other than Coal Deposits). Sec. 4, Act 1901, chap. 45. Amended 1919, p. 99.

Sections 212, 213, 214 of the Compiled Statutes of Wyoming which were a re-print of sections 5, 6, and 7 of the Act of 1901, ch. 45, concerning fees, records and reports, were repealed by the Act of February 22, 1919, page 99, above cited.

Salary.

Sec. 215. The State Geologist shall receive an annual salary of thirty-six hundred dollars to be paid monthly by the State treasurer, upon a warrant of the State Auditor for this purpose." L. 1901, sec. 8, ch. 45, amended 1919, p. 99.

Interest in mining property disqualifies.

Sec. 216. No person holding a pecuniary interest in a mining property in this State shall be eligible to fill or hold the office of State geologist. L. 1901, ch. 45, § 9.

Failure to Utilize Natural Gas.

Section 1. The use, consumption or burning of natural gas taken or drawn from any natural gas well or wells, or borings from which natural gas is produced for the products where such natural gas is burned, consumed or otherwise wasted without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes is hereby declared to be a wasteful and extravagant use of natural gas and shall be unlawful when such gas well or source of supply is located within ten miles of any incorporated town or industrial plant. Act Feb. 24, 1919, Sess. L., p. 169.

Wasteful Use in Certain Processes Forbidden.

Sec. 2. No person, firm or corporation, having the possession or control of any natural gas well or wells, except as herein provided, or borings from which natural gas is produced whether as a contractor, owner, lessee, agent or manager, shall use, sell, or otherwise dispose of natural gas, the product of any such well or wells, or borings for the purpose of manufacturing or producing carbon or other resultant products from the burning or consumption of such natural gas, without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes. *Id.*

Confiscatory Penalty.

Sec. 3. Any person, firm or corporation violating any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than one thousand dollars (\$1000.00) for each offense and each and every day in which any person, firm or corporation shall violate any of the provisions hereof shall constitute a separate offense hereunder and subject the offender to the penalty hereby provided. *Id.*

CHAPTER 84.

OIL INSPECTION LAW.

As before stated, inspection not being to any extent within the scope of this book, the Statutes of the several States are not printed but we insert the Indiana Act of 1919 as an instance of their general scope. It is perhaps later and more detailed than any other.

These inspection laws are intended to prevent the sale of oil until all possible precautions have been taken to secure against its inflammatory and explosive qualities; a danger which under no system can be entirely eliminated, also for the purpose of preventing the sale of mixtures and compound of inferior strength or mislabeled, so as to deceive the ordinary purchaser.

Indiana places the carrying out of the law under the State food and drug Commission and almost every State delegates like powers to some sort of board or other bureau of delegated authority and provides for the appointment of officials whose services are more or less inquisitorial and for the exaction of fees.

The tendency of these Acts is to exercise the undoubted right of inspection and the less defensible right to license for the prohibited purpose of collection of revenue under the protection of the conceded powers to inspect and license. Decisions on these points are found under Taxation, chap. 37 of this book.

CHAPTER 83, ACTS 1919

AN ACT providing for an [and] requiring the inspection and branding of products of petroleum before the same shall be offered for sale, or sold, or consumed, for illuminating purposes within the State of Indiana, and providing for, and requiring,

the inspection and branding of gasoline, benzine, naphtha and like products of petroleum under whatever name called, prescribing tests for inspections and the manner of making inspections, imposing duties upon the State food and drug Commission[er] thereunder, and fixing his compensation for the discharge of the duties imposed upon him, providing for the appointment of oil inspectors, prescribing their duties and fixing their compensation, fixing inspection fees and providing for their collection, providing penalties for violations of the Act, repealing laws in conflict therewith, providing that after midnight, September 30, 1919, an Act of the seventy-first general assembly entitled "An Act regulating the inspection of oil, gasoline and other petroleum products, providing penalties for its violation, repealing all former laws and laws in conflict therewith and declaring an emergency," shall have no force and effect and shall be repealed, and providing the time when the same shall be in force and effect.

Oil Inspection—Method.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That all mineral or petroleum oil or any oil fluid or substance which is a product of petroleum or into which petroleum or any product of petroleum enters or is found as a constituent element, whether manufactured within this State or not, shall be inspected, approved and marked by brand or stencil as provided in, and required by this Act, before being offered for sale or sold for consumption for illuminating purposes within this State, or consumed for illuminating purposes within this State. Such inspection shall be made by the apparatus known as the "Foster cup" or Foster's automatic oil tester in accordance with the following directions:

- (1) Remove the thermometer with its mountings from the oil cup.
- (2) Lift off the oil cup containing the flashing taper and fill open water bath with water to the mark upon the inside.
- (3) Take the wick holder from the oil cup, and fill this vessel with the oil to be tested, pouring in the oil at the place of the wick holder and noting the gauge mark at the thermometer

hole, pouring very gradually as the surface approaches the gauge mark. The gauge mark consists of a small pendant shelf and the oil cup is properly filled when the upper surface of the oil just adheres to the lower surface of the gauge mark. Too much care cannot be taken at this point. Having ceased pouring, tip the cup so that the oil flows away from the gauge, then gradually restore it to the horizontal, and if the surface does not again adhere, add a little more oil.

(4) Adjust the wick of the flashing taper to give a flame that does not exceed one-quarter of an inch in height and that exhibits as much blue at its base as yellow at its top.

(5) Set the oil cup on top and into the water bath, return the flashing taper to its place, inverting the conical thimble around it, and return the thermometer to its place upon the cup. In doing this be sure that the casing of the latter is pushed down upon the cup as far as it will go.

(6) Fill the lamp beneath half full of alcohol, light and place it beneath the water bath. Note the rate of increase in temperature as shown by the thermometer and adjust the wick to raise the temperature at the rate of two (2) degrees per minute. When the temperature has reached one hundred (100) degrees, light the flashing taper and observe it closely. As soon as the oil under test has reached its "flashing point," the flame of this taper will be extinguished by the first "flash," and the point of attention is the temperature at the instant the flame of the taper is extinguished. This "flashing point" is the point of temperature at which the oil generates vapor.

Flash Test 120° Fahrenheit.

No mineral oil or petroleum oil or any oil fluid or substance which is a product of petroleum, or into which petroleum or any product of petroleum enters or is found as a constituent element, whether manufactured in this State or not, which by the test herein prescribed flashes at any temperature below one hundred and twenty (120) degrees Fahrenheit, shall be offered for sale or sold for consumption for illuminating purposes within this State, or used for illuminating purposes within this State.

Sale or Use Prohibited before Inspection.

Sec. 2. Gasoline, benzine, naptha and all like products of petroleum, under whatever name called, whether manufactured in this State or not, having a lower flash test than provided in this Act for illuminating oils, shall be inspected as provided in this Act before being offered for sale or sold for consumption within this State, or used in this State.

**Under Supervision of State Food and Drug Commissioner—
Compensation and Reports.**

Sec. 3. It shall be the duty of the State food and drug commissioner, and of the oil inspectors appointed, with the approval of the governor, by him, to inspect and brand, in the way and manner provided for in and required by this Act, all mineral or petroleum oil or any oil fluid or substance which is a product of petroleum or into which petroleum or any product of petroleum enters, or is found as a constituent element, whether manufactured within this State or not, required by this Act to be inspected and branded, before the same shall be offered for sale, or sold, for consumption for illuminating purposes within this State, and before the same shall be consumed for illuminating purposes within this State, and to inspect and brand in the way and manner provided in, and required by, this Act, gasoline, benzine, naptha and all like products of petroleum, under whatever name called, whether manufactured within this State or not, having a lower flash test than provided in this Act for illuminating oils, required by this Act to be inspected and branded, and to cause all provisions of this Act to be observed and enforced. The State food and drug commissioner shall supervise under the provisions of this Act all inspections and brandings required by this Act, and he shall perform any and all duties required of him by this Act, which duties shall be additional to the duties imposed upon him as State food and drug commissioner. He shall keep a record of all inspections made in the State by himself as food and drug commissioner acting hereunder, and by the oil inspectors appointed under this Act, showing the time and place of each inspection, the number

of containers inspected, the number of gallons inspected in each container, the name of the petroleum product inspected, the fees charged for the inspection, by whom inspected, for whom inspected, the result of the inspection, and any other facts that shall be proper to effect an efficient execution of this Act. He shall require all oil inspectors appointed under this Act to make monthly reports to him of their inspections, and such other reports as he may from time to time desire made to him touching their duties as oil inspectors under this Act.

Appointment and Removal of Oil Inspectors.

The State food and drug commissioner, under the provisions of this Act, is empowered to appoint, with the approval of the governor, a sufficient number of oil inspectors properly to make all inspections provided for in this Act, and he may remove at any time, with the approval of the governor, any oil inspector or oil inspectors. The number of inspection districts in the State shall be determined and their Territory defined by the State food and drug commissioner, with the approval of the governor, which inspection districts may from time to time be changed as to number and Territory by the State food and drug commissioner, with the approval of the governor. The State food and drug commissioner under this Act is empowered to go into any part of the State and himself make any inspection required by this Act to be made, and he may transfer, with the approval of the governor, any oil inspector from any inspection district to any other inspection district. He shall prepare forms of all stencils and brands provided for in this Act, and shall make rules and regulations for the guidance of the oil inspectors in the discharge of their duties under this Act not inconsistent with the provisions of this Act, and such rules and regulations shall be binding on all oil inspectors in the State. The State food and drug commissioner before entering upon the discharge of his duties under this Act shall execute to the State a bond in the penal sum of twenty-five thousand dollars (\$25,000) with surety to be approved by the Secretary of State conditioned upon the faithful performance of the duties imposed upon him by this Act, and such bond, when approved shall be filed with the Sec-

retary of State. The State food and drug commissioner is empowered to employ as many stenographers and clerks and fix their compensation, with the approval of the governor, as may be necessary properly to care for the duties imposed upon him by this Act, but the aggregate amount of all compensation paid to stenographers and clerks employed in the office of the State food and drug commissioner under this Act, shall not exceed three thousand six hundred dollars (\$3,600) annually. The State shall furnish to the State food and drug commissioner a suitable office at Indianapolis, Indiana, for the discharge by him of his duties under this Act. He shall make to the governor annually a report of all inspections and transactions under this Act, and shall from time to time make such other reports to the governor as may be requested of him by the governor. The State food and drug commissioner shall be paid the sum of five hundred dollars (\$500.00) per annum for the discharge of his duties under this Act, which sum shall be additional to the salary now paid to him under the law as State food and drug commissioner and chemist to the State board of health. The State food and drug commissioner under this Act shall also be allowed such further amount as he may actually and necessarily expend in traveling in the discharge of his duties under this Act. The compensation of five hundred dollars (\$500.00) to be paid to the State food and drug commissioner for his services under this Act, and the compensation to be paid to the stenographers and clerks provided for in this Act and all traveling expenses of the State food and drug commissioner provided for in this Act, shall be paid monthly from the State treasury upon the warrant of the auditor of State issued upon vouchers signed by the State food and drug commissioner under this Act. There is now hereby appropriated annually for the payment of all compensation, expenses and sums provided for in this section, from the general fund of the State treasury not otherwise appropriated, an amount sufficient to pay said compensation, expenses and sums.

Bond of Inspectors—Duties—Salaries.

Sec. 4. Each oil inspector appointed under this Act shall ex-

ecute a bond payable to the State of Indiana in the penal sum of five thousand dollars (\$5,000) with surety to be approved by the Secretary of State, conditioned upon the faithful performance by him of the duties imposed upon him by this Act, which bond when approved shall be filed with the Secretary of State. Before entering upon his duties as oil inspector under this Act, each person appointed an oil inspector shall take and subscribe an oath faithfully and honestly to discharge the duties imposed upon him by this Act, which oath shall also be filed with the Secretary of State. Oil inspectors appointed under this Act shall inspect all products of petroleum required by this Act to be inspected, and shall comply with the rules and regulations issued by the State food and drug commissioner, for their guidance in the discharge of their duties under this Act. It shall be the duty of all oil inspectors, appointed under this Act, on the first day of each month to make a true and accurate return under oath to the State food and drug commissioner on forms prepared by him, of all inspections made during the preceding month, giving the time and place of each inspection, the number of containers inspected, the number of gallons inspected in each container, the name of the petroleum product inspected, the fees charged for the inspection with the amount of fees collected by him, for whom inspections were made, the result of the inspection, and such other facts as may be required of him by the State food and drug commissioner. No oil inspector shall be entitled to any compensation for his services for any month until he shall have fully complied with the requirements of this Act. The reports of oil inspectors filed with the State food and drug commissioner under this Act, and the records of the State food and drug commissioner under this Act, shall at all times be kept in the office of the State food and drug commissioner, and shall at all times be open for the examination and information of all persons who may desire to see and examine the same. No oil inspector shall be interested in manufacturing, dealing, or vending in any product of petroleum which it is his duty under this Act to inspect. It shall be the duty of the State food and drug commissioner, and of all oil inspectors appointed under this Act, to provide themselves,

at their own expense, with the necessary instruments, apparatus and stencils for the testing and branding of all petroleum products required to be inspected and branded under this Act. For compensation for services under this Act, each inspector shall be paid per month a sum, not exceeding one hundred and twenty-five dollars (\$125), equal in amount to the total of all fees for inspections made by him in the month for which the compensation is paid. No oil inspector shall receive compensation for services in any month in excess of one hundred twenty-five dollars (\$125). In addition to the compensation for services in this section provided, each oil inspector shall be allowed and paid at time of the payment of his monthly compensation for services, such further amount as he has actually and necessarily expended in traveling in the discharge of his duties as oil inspector in the month for which compensation for services is paid; Provided, That after the payment of compensation for his services there remains from the total of all fees charged under this Act for inspections made by him in the month for which the compensation for services is paid, any excess from which the traveling expenses may be paid, and only to the extent of this excess shall any traveling expenses be allowed or paid. Compensation for services of oil inspectors, and traveling expenses of oil inspectors actually and necessarily incurred in the discharge of their duties under this Act, shall, within the limitations provided in this section, be paid from the oil inspection fund in the State treasury, which fund is now under this Act created, upon warrants of the auditor of State issued upon vouchers signed by the State food and drug commissioner in the discharge of his duties under this Act. Said oil inspection fund is hereby annually appropriated for the payment of all compensation, expenses and sums provided by this Act to be paid from said oil inspection fund.

Inspectors' Approval.

Sec. 5. The State food and drug commissioner and the oil inspectors appointed under this Act, when called upon to make inspections required by this Act, shall promptly make such inspections and shall promptly do all things required of them by

this Act. If, upon inspection, any mineral or petroleum oil or any oil fluid or substance which is a product of petroleum, or into which petroleum, or any product of petroleum, enters or is found as a constituent element, which is offered for sale or intended to be offered for sale for consumption within this State for illuminating purposes, or which is intended for consumption within this State for illuminating purposes, shall meet the requirements of this Act, the State food and drug commissioner or an oil inspector appointed under this Act shall mark by stencil or brand, in plain letters, on the tank, cask, barrel or vessel containing the same, the word "Approved," with the date of the inspection and the name and official designation of the oil inspector making the inspection. If so approved and branded, it shall then be lawful for the same to be offered for sale or sold for consumption within this State for illuminating purposes and to be used within this State for illuminating purposes. But if the same, upon inspection, shall not meet the requirements of this Act, the State food and drug commissioner, or an oil inspector appointed under this Act, shall mark by stencil or brand, in plain letters, on the tank, cask, barrel or vessel containing the same, the words "Rejected for illuminating purposes," with the date of the inspection, and the name and official designation of the oil inspector making the inspection; and it shall be unlawful for any manufacturer, owner, vendor, dealer, or any other person, to sell or offer for sale the petroleum product so rejected and branded, to be consumed within this State for illuminating purposes, or to consume the petroleum product so rejected and branded for illuminating purposes within this State. Whoever offers for sale, or sells, for consumption for illuminating purposes within this State, or consumes for illuminating purposes within this State, such product of petroleum so rejected for illuminating purposes, and so branded, or whoever offers for sale, or sells, for consumption for illuminating purposes within this State, or consumes for illuminating purposes within this State, any product of petroleum required by this Act to be inspected and branded, before the same shall have been inspected and branded, as by this Act provided and required, shall be guilty of a misdemeanor, and shall, upon con-

viction, be fined in any sum not exceeding one thousand dollars (\$1,000), or be imprisoned in the county jail not exceeding sixty (60) days, or both.

Tanks, Casks or Barrels to Be Marked—Penalty.

Sec. 6. Upon inspection of gasoline, benzine, naphtha, and all like products of petroleum, under whatever name called, required by section 2 of this Act to be inspected, the State food and drug commissioner, or an oil inspector appointed under this Act, shall mark by brand or stencil, in plain letters, on the tank, cask, barrel or vessel containing the gasoline, benzine, naphtha or like products of petroleum, under whatever name called, the commercial name of the contents of the tank, cask, barrel or vessel inspected, the word "Dangerous," the date of the inspection and the name and official designation of the oil inspector making the inspection; and it shall then be lawful for the same to be offered for sale or sold for consumption within this State, or to be consumed within this State. It shall be unlawful for any manufacturer, owner, vendor, dealer or other person to offer for sale, or sell, for consumption within this State, or to consume within this State, gasoline, benzine, naphtha, or any like product of petroleum under whatever name called, whether manufactured in this State or not, until after the same has been inspected and marked by brand or stencil, as in this Act provided and required. Whoever offers for sale, or sells for consumption within this State, or consumes within this State, any gasoline, benzine, naphtha, or like products of petroleum, under whatever name called, not inspected and not marked by brand or stencil, as in this Act provided and required, shall be guilty of a misdemeanor and shall, upon conviction, be fined in any sum not exceeding one thousand dollars (\$1,000), or be imprisoned in the county jail not exceeding sixty (60) days, or both.

Fees for Inspection.

Sec. 7. Each owner or other person for whom, or at whose request, inspections under this Act are made, shall pay to the

State food and drug commissioner, or to the oil inspector making the inspection, the following fees:

For a single barrel, package or cask, twenty-five cents (25c);

When the lot inspected does not exceed ten barrels of fifty (50) gallons each in the aggregate, for each barrel fifteen cents (15c);

When the lot inspected does not exceed fifty (50) barrels of fifty (50) gallons each in the aggregate, for each barrel, ten cents (10c);

When the lot inspected exceeds fifty (50) barrels of fifty (50) gallons each in the aggregate, for each barrel, four cents (4c). All inspection fees under this Act are payable on demand of the State food and drug commissioner, or any oil inspector, and in no case shall payment of fees for inspections under this Act be deferred beyond the tenth day of the next month following the month in which the inspection was made, and such fees shall be a lien on the petroleum products inspected. Oil inspectors shall promptly remit to the State food and drug commissioner all fees collected by them. The State food and drug commissioner shall pay weekly into the State treasury to the credit of the oil inspection fund, all moneys received by him under this Act. Any balance remaining in the oil inspection fund shall at the end of each fiscal year, revert to the general fund in the State treasury.

Commingleing of Contents.

Sec. 8. If any uninspected product of petroleum, by whatever name called, required under this Act to be inspected, shall be emptied or transferred into any tank or vessel in which there is contained any product of petroleum that has been inspected, approved and marked as in this Act required, then the entire commingled contents shall be deemed under this Act uninspected.

Rejected for Illuminating Purposes.

Sec. 9. If any inspected and rejected product of petroleum intended for illuminating purposes, required by this Act to be

inspected, shall be emptied or transferred into any tank or vessel in which there is contained any inspected and approved product of petroleum intended for illuminating purposes required by this Act to be inspected, or if any inspected and rejected product of petroleum intended for illuminating purposes, required by this Act to be inspected, shall be emptied or transferred into any tank or vessel in which there is contained any uninspected product of petroleum intended for illuminating purposes, required by this Act to be inspected, then the entire commingled contents shall be for all purposes of this Act deemed rejected, the same as if the entire commingled contents had been inspected and rejected, and had been marked and branded "Rejected for illuminating purposes." Whoever offers for sale, or sells, for consumption for illuminating purposes within this State, or consumes for illuminating purposes within this State, such commingled contents, or any part thereof, deemed rejected under this Act, shall be guilty of a misdemeanor and shall be subject to the penalty and punishment provided in section 5 of this Act.

Location for Inspection.

Sec. 10. Any product of petroleum required by this Act to be inspected, shall be inspected within this State and may at the direction of the State food and drug commissioner, be inspected either at the place where the tank, barrel, cask, or other vessel is filled with such petroleum product, if filled within this State, or at the destination of shipment if within this State. Barrels or other receptacles filled from storage tanks with petroleum products required by this Act to be inspected and marked by stencil or brand, which have been inspected and approved as in this Act provided, shall be marked by stencil or brand as required in this Act without the charge of any additional fees. At the time of the inspection of any petroleum product required by this Act to be inspected the State food and drug commissioner, or the oil inspector making the inspection, shall deliver to the owner, or other person for whom or at whose request the inspection was made, a certificate showing the making of the inspection, and the result thereof, which certificate shall be dated and signed, and

shall be issued in duplicate if so requested by the owner, or other person for whom, or at whose request, the inspection was made. For the issuing of the certificate no fee shall be charged.

Wagons or Trucks—Certificates—Penalty.

Sec. 11. Wagons or trucks from which any petroleum product intended for consumption in this State for illuminating purposes, required under this Act to be inspected and marked by brand or stencil, is delivered to consumers or dealers, shall bear a certificate in duplicate with the certificate issued by the State food and drug commissioner, or by an oil inspector, covering the contents of the last tank emptied into the storage tank from which the wagon or truck was filled. If the contents of the wagon or truck be gasoline, benzine, naphtha, or like product of petroleum, under whatever name called, then the wagon or truck shall bear marked on, or affixed to it by stencil or brand, in plain letters, the commercial name of its contents with the word "Inspected." Whoever, including the driver of the wagon or truck, violates any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be subject to a penalty, for each day of the violation of the provisions of this section, in any sum not exceeding one hundred dollars (\$100) or be imprisoned in the county jail for a period not exceeding thirty (30) days or both.

Inspection Brand to Be Erased from Barrels, Casks, etc., before Sale—Penalty.

Sec. 12. Any person selling or in any way disposing of an empty barrel, cask, vessel or other container, which has been marked by brand or stencil by the State food and drug commissioner, or by an oil inspector under this Act before thoroughly cancelling, removing and effacing the inspection brand on the same, shall be guilty of a misdemeanor and shall, upon conviction, be fined for each offense in any sum not exceeding fifty dollars (\$50), or be imprisoned in the county jail for any period not exceeding sixty (60) days, or both.

False Branding—Penalty.

Sec. 13. Any person not the State food and drug commissioner, and not an oil inspector appointed under this Act, who shall mark by brand or stencil on any tank, barrel, cask or other vessel containing any product of petroleum required under this Act to be inspected and marked by brand or stencil with the words required by this Act to be marked by brand or stencil thereon by the State food and drug commissioner, or by an oil inspector under this Act, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not exceeding one hundred dollars (\$100), or be imprisoned in the county jail for a period not exceeding thirty (30) days or both.

Inspection when Not Required.

Sec. 14. No provision of this Act shall require the inspection of miners' lamp-oil, paraffin wax, fuel oil for fuel purposes under boilers for generating steam, furnaces or retorts in place of other fuel in manufacturing plants, or gas-making material when sold to gas works for manufacture of gas.

Inspectors May Enter Premises.

Sec. 15. In the performance of their duties under the provisions of this Act, the State food and drug commissioner and the oil inspectors appointed under this Act, may enter upon the premises of any manufacturer, vendor or dealer in any petroleum product required by this Act to be inspected, and may require from any person, firm, corporation or association selling any product of petroleum required by this Act to be inspected, a statement covering any period desired of the number of barrels by the person, firm, corporation or association sold.

CHAPTER 85.

BLUE SKY LAWS.

Within recent years a body of statutory law has been enacted which, following a rhetorical allusion in the language of one of the opinions on fraudulent stock transactions, to the sale of "so many acres of blue sky," has received the designation of Blue Sky Laws.

They cannot be referred to under any specific head because they come under several guises but in general they take the shape of licenses, insurance regulations, Public Utilities Commissions or restrictions on corporate organization.

Their avowed object is to prevent the flotation of corporate stock or securities, issued by companies having a legal and formal organization but more or less destitute of funds with which to float the enterprise, or property out of which to develop value, or assets to pay judgments when damages are adjudged against them.

The purpose is "reform" and with this talismanic word they obtain at once the suffrages of all well meaning citizens. But their proponents, like most reformers, regard the bill of rights and the constitutional safeguards of personal liberty merely as obstacles in the way of such reform, to be overridden or set aside just as far as the Court will allow this to be done.

The Blue Sky Laws of Ohio, South Dakota and Michigan came before the Federal Supreme Court in 1916 in a series of cases, argued together. They had been attacked in the Courts below and in each case held unconstitutional. But the National Supreme Court held them valid under the police power of the State and not in violation of the fourteenth amendment and that the drastic power given the board to discriminate between corporations of good and evil reputation was not arbitrary. Interstate commerce was held not interfered with. *Hall v. Geiger*

Jones Co.; Cadwell v. Sioux Falls Co.; Merrick v. Halsey, 242 U. S. 539-590.

In the *Halsey case* the opinion considers the expediency of laws of this character, throwing the responsibility upon the legislative department and holding that where fraud is possible it may be anticipated, and statutes to prevent it will be upheld. But neither of the three cases disposes of the argument which stands as strong today as before these decisions, not against the necessity for legislation nor the magnitude of the evil to be prevented, but against the means by which it is sought to prevent it, to wit: Leaving to boards and Commissions the power to decide on personal and property rights practically beyond appeal to judicial protection.

Alabama

has no Blue Sky Laws except to require license to persons dealing in stocks and bonds. Laws of 1915, No. 469.

Arizona

has a series of Acts from 1913 to 1919 confined to brokers and investment companies and corporations, and associates defined into investment companies, requiring full statements and registration placing them under the Corporation Commission. These Acts are re-enforced with extremely severe penalties.

Arkansas

has a full Act passed in 1915, amended in 1917, placing the whole subject under the bank commissioner.

Section 3 of the 1915 Act page 885 contains the list of securities excepted from the Act. Hearings are provided for, but the bank commissioner is allowed to act in advance of the hearing. The scope is to place almost absolute power in the bank commissioner. The Arkansas Act of 1913 was held valid in *Standard Home Co. v. Davis*, 217 Fed. 904 as to its provisions demanding information from the corporations affected by the law.

California

has a full Code on the subject which confers authority to carry out the law on the commissioner of corporations with prescribed printed forms.

The second annual report of the corporation department reviews the practical operation of the Act claiming for it, as is doubtless true, large benefits to the investing public. But the boast that no appeals have been taken from their decisions must be qualified by the fact that upon appeal the burden of proof is on the appellant and even if successful the relief to be allowed seems to be almost nil. The report goes out of its way to select oil companies as possibly dangerous wild cats.

Colorado's Blue Sky Laws

are limited to insurance companies. Act of 1915, page 264.

Connecticut

requires filings with the bank commissioner, licenses and reports with bonds from investment brokers.

The Delaware Act.

of 1915 is limited to foreign corporations, requiring sworn statement of their assets and liabilities.

Florida

requires permits to sell stock issued on showing details of assets, verified. It divides dealers into foreign and domestic investment companies. It has been construed that it does not deny equal protection to local corporations. *Ex parte Taylor*, 68 Fla. 61, 66 So. 292; Ann. Cas. 1916A 701.

Georgia

has a full Blue Sky Law requiring the usual reports and non-compliance with the law is severely punished. Work on the chain gang is provided as one of the punishments, the idea of reforma-

tion of convicts by degradation being a part of the penal system of that State.

Idaho

has a detailed Blue Sky Law similar to that of Ohio. See references under that State.

Illinois.

The law of Illinois is extremely detailed, perhaps more so than that of any other State. Among other things a dealer is required before securing license to give a résumé of his life with a showing that he has never been convicted of fraud and is open to criticism from any lawyer, who is tenacious for constitutional protection.

Indiana's Regulation

of the topic is committed to the auditor of State who requires the usual statements and reports. Foreign investment companies are compelled to deposit with the auditor \$50,000 in securities of the class offered for sale.

Iowa's Blue Sky Law

of 1915 is voluminous in detail. As it stood in 1913 it was held an interference with interstate commerce and to deny equal protection of the laws. *William R. Compton Co. v. Allen*, 216 Fed. 537. It is substantially the same as the Ohio law.

Kansas.

The Blue Sky Laws, extending from 1911 to 1919, consist of the original Act followed by repeated amendments and is substantially according to the tenor of the Ohio law.

The Kentucky Act

dates back to 1902, seems to be confined to investment companies and is moderate and conservative in its provisions.

Louisiana

requires itinerant brokers to take out licenses preceded by a bond in the sum of \$15,000. The Act is unique, extremely limited in its subject matter and prohibitive to such an extent that the surety companies have refused to furnish the bonds required.

Maine

requires since 1914 a registration of salesmen and dealers in securities. State licenses issue upon the usual showing as to the responsibility of the companies issuing the securities. Its provisions are moderate and fair.

Maryland's

Statutes are confined to insurance companies.

The Massachusetts Act

of 1904 seems to be limited to corporations selling securities on the partial payment plan. The Act of 1911 is a penal Statute against officers of mining corporations making false statements and prohibiting advertisements without filing proof of financial condition. This legislation is one of the few Blue Sky Laws which distinctly recognizes the right of the interested party to his day in Court.

The Michigan

law is referred to under Ohio. Copies of oil, gas and mining leases and their assignments are required to be filed.

The Minnesota Act

of 1917 as amended in 1919 leaves the enforcement of the law to the State Securities Commission.

Their report for 1918 contains a full exposition of the intent and scope of Blue Sky Laws and the practice under the same. The Acts are minute in detail. See Ohio.

The Mississippi

Act of 1916 requires permits to dealers with the usual precautions to show the solvency of the companies offering securities and limitation upon the Commissions allowed to dealers.

A Missouri Act of 1893,

limited to sales under the installment plan, was construed in *State v. Stephens*, 136 Mo. 537 and *Morrill v. Am. Reserve Bond Co.*, 151 Fed. 305. Its Act of 1913 is an Investment Company Statute giving Supervision to the Bank Commissioner.

Montana's Act of 1913

creates the office of Investment Commissioner and requires a license to dealers with the usual precautionary requirements to assure solvency.

In a case arising under the Statute relief was refused to a complaining company on the ground that on its face it was a corporation intended to defraud. *National Merc. Co. v. Keating*, 218 Fed. 477.

Nebraska

in 1919 created a State Trade Commission having general control of the subject. The old Act of 1903 had been held valid in *State v. Prout*, 72 Neb. 497, on the question of the general power of the State to regulate and the grant of judicial power to the banking board.

New Hampshire.

The scope of the New Hampshire Act of 1917 chap. 202 is expressed in its title: "An Act to protect the public against the sale of worthless securities." It requires the usual conditions as to reports and statements.

New Jersey

has no Blue Sky Law, barring a penal Statute against publica-

tion of fake advertisements and circulars in re the sale of securities. Acts of 1913, chap. 318.

The New York Statutes

seem to be confined to insurance and investment companies especially in connection with the banking business, and cannot be properly classed as a general Blue Sky Law.

North Carolina

requires a license to brokers and has a concise Blue Sky Law. A conviction for failure to take out license under the Act was sustained in *State v. Agey*, 171 N. C. 831, the opinion containing a judicial defense of the power of the State to enact such Statutes.

North Dakota

has a full Statute passed in 1915 similar to the Ohio law.

Ohio.

As the Blue Sky Code of Ohio is possibly the most complete and as the other States practically follow their formula we state its procedure below.

The Department of Securities is created as a special State department, its executive officer being the Commissioner of Securities.

This Department furnishes printed questionnaires covering all details which lead up to the conclusion of value or want of value.

It was passed in 1913 by a referendum vote. In 1914, after the Michigan law had been held unconstitutional by a Federal Court, the Act was amended with further amendments in 1915 and 1917. In 1917 its enforcement was placed under the department of securities.

Dealers in stock or securities must procure license. An application for such license must be filed giving all details of the dealers address and plan of operations with references to be investigated by the commissioner; a stipulation for service on

the Sheriff in case of suit brought against him; publication of the application; annual fee of \$50 and several minor fees for filings.

The Commissioner is empowered to revoke a license without a hearing but the dealer whose license has been revoked may apply to the Court for a review on which the burden of proof is on the dealer to prove his innocence.

The dealer must file detailed account of the securities intended to be offered to the public; and copies of all advertisements and circulars.

Where the securities are founded on real estate the Commissioner is allowed to make an examination of it.

The information imparted to the commissioner "shall not be disclosed by him except when lawfully required in a judicial proceeding." Sec. 14. Such promise of the State, if such it may be called, depends for its keeping on honor alone and is wholly perfunctory.

Oregon.

The Acts of this State were passed in 1913 (chap. 341) and 1915 (chap. 324). They cover practically the same ground and demand the same conditions as Ohio.

Pennsylvania.

The Pennsylvania Act of 1917 P. L. 804, seems to be confined to Insurance Companies.

Rhode Island

by Act of 1910 requires a preliminary statement to be filed with the Secretary of State showing the financial condition of the company, with an annual report.

It provides for examination of the financial state of the company by the bank examiner and if his report indicate unsoundness, suggests judicial proceedings to prevent further sales of stocks or bonds, a provision which is in admirable contrast to the requirements of other States which condemn on *ex parte* inspection without hearing or process of law.

South Carolina.

The Act of 1915 concisely requires statements and reports and registration similar to those of States with more extended Codes.

South Dakota.

The Statutes of this State are similar to and were passed upon by the same cases which upheld the Ohio and Michigan Acts.

Tennessee.

The Tennessee Act of 1913, chap. 31, extra session, is concise and not very clear, apparently confined to corporations and associations, demanding the usual proofs of solvency, waiver of personal service, and annual reports; also a unique section requiring the company to strike a balance every month which would be almost useless and often impracticable. The penalties are unusually severe.

Texas

has a series of Acts amounting to a full Code upon the subject, requiring statements, permits and reports, demanding particularly in the case of oil, gas and mining companies, proof of the value of the lands, empowering the commissioner to employ experts to determine such value.

A full set of forms are printed and in the application for permit to sell stock a detailed list of interrogatories must be answered.

These Statutes are framed on the same general principle as those of Ohio.

Utah.

The Utah Act was passed in 1919. It creates a State Securities Commission and requires registration and licenses with \$5,000 bond from each dealer. The most trifling violation of the Act is made a felony with civil damages for any sale made contrary to the Act without the proof of fraud.

The commissioner is given judicial power with the right to

revoke licenses before hearing and no provision for appeal to the Courts.

Vermont,

by the Act of 1912 as amended in 1917, requires bond to be filed with the bank commissioner with the usual statements and waiver of process.

It contains a unique provision allowing revocation papers to be issued by the Attorney General who thereupon applies to the chancellor for a receiver and to wind up the corporation.

Virginia.

The enforcement of the Act is devolved upon the State Corporation Commission which requires the usual statements and reports with a clause compelling citizens to testify against themselves with the promise (which the State has no right to make) that they shall not be prosecuted. The Statute further violates the constitution in making the findings of the Commission *prima facie* evidence in criminal cases.

West Virginia.

The West Virginia Act of 1915 chap. 18, is confined to what it defines as speculative securities. It demands the usual statements but by its section 15 requires application to the Court for the relief demanded against alleged violators of the law. The prior act of 1913 had been declared unconstitutional in *Bracey v. Darst*, 218 Fed. 482.

Wisconsin.

The Wisconsin Act of 1919, chap. 674, places enforcement of the Blue Sky Law with the Railroad Commission. It is framed substantially upon the Ohio law.

Wyoming.

The Act of 1919 after the usual definition of speculative securities places the enforcement of the law with the State exam-

iner being one of the few Acts on this subject matter which provide for full relief by judicial proceedings where the findings of the State examiner are contested.

A compilation of the Blue Sky Laws of the several States known as Elliot's Blue Sky Laws was published in 1919, well edited and thoroughly annotated.

The whole subject, to recapitulate, is one where the object intended is salutary, the necessity for the legislation apparent and the only objection to it from the standpoint of the attorney is the general tendency of such Statutes to infringe on constitutional guaranties. We believe that the destruction of any of the fundamental clauses of Magna Charta is a greater evil than any supposed benefit based on the maxim that good ends justify bad means. *Jackson, ex parte*, 263 Fed. 110.

CHAPTER 86.

ALASKA COAL.

Alaska is excepted from the terms of the Leasing Act of 1920 and its coal lands are governed by the Act of 1914 and the regulations under the same.

Alaska is of course the only Continental Territory and its distance, its extent and its climate, render its conditions so different as to justify special Legislation but the regulations treat this wild land with a severity of detail framed on the leasing policy of largely developed fields and in the investment in Alaska Coal lands legal counsel will be constantly required.

We print the entire Act and regulations without further comment.

Title.

An Act to provide for the leasing of coal lands in the territory of Alaska, and for other purposes. Approved October 20, 1914, 38 Stat. L. 741; Comp. L. 5078a-5078b.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Survey of the Territory Directed. Appropriation.

SECTION 1. That the Secretary of the Interior be, and hereby is, authorized and directed to survey the lands of the United States in the Territory of Alaska known to be valuable for their deposits of coal, preference to be given first in favor of surveying lands within those areas commonly known as the Bering River, Matanuska, and Nenana coal fields, and thereafter to such areas or coal fields as lie tributary to established settlements or existing or proposed rail or water transportation lines: *Provided*, That such surveys shall be executed in accordance with exist-

ing laws and rules and regulations governing the survey of public lands. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000 for the purpose of making the surveys herein provided for, to continue available until expended: *Provided*, That any surveys heretofore made under the authority or by the approval of the Department of the Interior may be adopted and used for the purposes of this Act.

President to Reserve Certain Lands.

"SEC. 2. That the President of the United States shall designate and reserve from use, location, sale, lease, or disposition not exceeding five thousand one hundred and twenty acres of coal-bearing land in the Bering River field and not exceeding seven thousand six hundred and eighty acres of coal-bearing land in the Matanuska field, and not to exceed one-half of the other coal lands in Alaska: *Provided*, That the coal deposits in such reserved areas may be mined under the direction of the President when, in his opinion, the mining of such coal in such reserved areas, under the direction of the President, becomes necessary, by reason of an insufficient supply of coal at a reasonable price for the requirements of government works, construction and operation of government railroads, for the Navy, for national protection, or for relief from monopoly or oppressive conditions.

Coal Lands to Be Blocked. Sale by Lease to Qualified Bidders.

"SEC. 3. That the unreserved coal lands and coal deposits shall be divided by the Secretary of the Interior into leasing blocks or tracts of forty acres each, or multiples thereof, and in such form as in the opinion of the Secretary will permit the most economical mining of the coal in such blocks, but in no case exceeding two thousand five hundred and sixty acres in any one leasing block or tract; and thereafter, the Secretary shall offer such blocks or tracts and the coal, lignite, and associated minerals therein for leasing, and may award leases thereof through

advertisement, competitive bidding, or such other methods as he may by general regulations adopt, to any person above the age of twenty-one years who is a citizen of the United States, or to any association of such persons, or to any corporation or municipality organized under the laws of the United States or of any State or Territory thereof: *Provided*, That a majority of the stock of such corporation shall at all times be owned and held by citizens of the United States: *And provided further*, That no railroad or common carrier shall be permitted to take or acquire through lease or permit under this Act any coal or coal lands in excess of such area or quantity as may be required and used solely for its own use, and such limitation of use shall be expressed in all leases or permits issued to railroads or common carriers hereunder: *And provided further*, That any person, association, or corporation qualified to become a lessee under this Act and owning any pending claim under the public-land laws to any coal lands in Alaska may, within one year from the passage of this Act, enter into an arrangement with the Secretary of the Interior by which such claim shall be fully relinquished to the United States; and if in the judgment of the Secretary of the Interior, the circumstances connected with such claim justify so doing, the moneys paid by the claimant or claimants to the United States on account of such claim shall, by direction of the Secretary of the Interior, be returned and paid over to such person, association, or corporation as a consideration for such relinquishment.

"All claims of existing rights to any of such lands in which final proof has been submitted and which are now pending before the Commissioner of the General Land Office or the Secretary of the Interior for decision shall be adjudicated within one year from the passage of this Act.

New Leases.

"SEC. 4. That a person, association, or corporation holding a lease of coal lands under this act may, with the approval of the Secretary of the Interior and through the same procedure and upon the same terms and conditions as in the case of an original lease under this Act, secure a further or new lease covering ad-

ditional lands contiguous to those embraced in the original lease, but in no event shall the total area embraced in such original and new leases exceed in the aggregate two thousand five hundred and sixty acres.

"That upon satisfactory showing by any lessee to the Secretary of the Interior that all of the workable deposits of coal within a tract covered by his or its lease will be exhausted, worked out, or removed within three years thereafter, the Secretary of the Interior may, within his discretion, lease to such lessee an additional tract of land or coal deposits, which, including the coal area remaining in the original lease, shall not exceed two thousand five hundred and sixty acres, through the same procedure and under the same competitive conditions as in case of an original lease.

Consolidation of Leases.

"SEC. 5. That, subject to the approval of the Secretary of the Interior, lessees holding under leases small blocks or areas may consolidate their said leases or holdings so as to include in a single holding not to exceed two thousand five hundred and sixty acres of contiguous lands.

Maximum Acreage. Second Lease Forbidden. Forfeiture.

"SEC. 6. That each lease shall be for such leasing block or tract of land as may be offered or applied for, not exceeding in area two thousand five hundred and sixty acres of land, to be described by the subdivisions of the survey, and no person, association, or corporation, except as hereinafter provided, shall be permitted to take or hold any interest as a stockholder or otherwise in more than one such lease under this Act, and any interest held in violation of this proviso shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in any Court of competent jurisdiction, except that any such ownership and interest hereby forbidden which may be acquired by descent, will, judgment, or decree may be held for two years, and not longer, after its acquisition.

Felony to Hold Second Lease.

"SEC. 7. That any person who shall purchase, acquire, or hold any interest in two or more such leases, except as herein provided, or who shall knowingly purchase, acquire, or hold any stock in a corporation having an interest in two or more such leases, or who shall knowingly sell or transfer to one disqualified to purchase, or except as in this Act specifically provided, disqualified to acquire, any such interest, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment for not more than three years and by a fine not exceeding \$1,000: *Provided*, That any such ownership and interest hereby forbidden which may be acquired by descent, will, judgment, or decree may be held two years after its acquisition and not longer, and in case of minority or other disability such time as the Court may decree.

Corporate Officers Attempting to Hold Second Lease.

"SEC. 8. That any director trustee, officer, or agent of any corporation holding any interest in such a lease who shall, on behalf of such corporation, act in the purchase of any interest in another lease, or who shall knowingly act on behalf of such corporation in the sale or transfer of any such interest in any lease held by such corporation to any corporation or individual holding any interest in any such a lease, except as herein provided, shall be guilty of a felony and shall be subject to imprisonment for a term of not exceeding three years and a fine of not exceeding \$1,000.

Unlawful Trust Combinations.

"SEC. 8a. If any of the lands or deposits leased under the provisions of this Act shall be subleased, trustee, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form part of or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, entered into by the lessee, or of any

holding of such lands by any individual, partnership, association, corporation, or control, in excess of two thousand five hundred and sixty acres in the Territory of Alaska, the lease thereof shall be forfeited by appropriate Court proceedings.

Rents and Royalties. Renewals.

"SEC. 9. That for the privilege of mining and extracting and disposing of the coal in the lands covered by his lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall not be less than two cents per ton, due and payable at the end of each month succeeding that of the shipment of the coal from the mine, and an annual rental, payable at the beginning of each year, on the lands covered by such lease, at the rate of twenty-five cents per acre for the first year thereafter, fifty cents per acre for the second, third, fourth, and fifth years, and \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases may be for periods of not more than fifty years each, subject to renewal, on such terms and conditions as may be authorized by law at the time of such renewal. All net profits from operation of government mines, and all royalties and rentals under leases as herein provided, shall be deposited in the treasury of the United States in a separate and distinct fund to be applied to the reimbursement of the government of the United States on account of any expenditures made in the construction of railroads in Alaska, and the excess shall be deposited in the fund known as The Alaska Fund, established by the Act of Congress of January twenty-seventh, nineteen hundred and five, to be expended as provided in said last-mentioned Act.

Free Coal on Small Tracts.

"SEC. 10. That in order to provide for the supply of strictly local and domestic needs for fuel the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue to any applicant qualified under section three of

this Act a limited license or permit granting the right to prospect for, mine, and dispose of coal belonging to the United States on specified tracts not to exceed ten acres to any one person or association of persons in any one coal field for a period of not exceeding ten years, on such conditions not inconsistent with this Act as in his opinion will safeguard the public interest, without payment of royalty for the coal mined or for the land occupied: *Provided*, That the acquisition of holding of a lease under the preceding sections of this Act shall be no bar to the acquisition, holding, or operating under the limited license in this section permitted. And the holding of such a license shall be no bar to the acquisition or holding of such a lease or interest therein.

Easements. Reserve of Surface.

"SEC. 11. That any lease, entry, location, occupation, or use permitted under this Act shall reserve to the Government of the United States the right to grant or use such easements in, over, through, or upon the land leased, entered, located, occupied, or used as may be necessary or appropriate to the working of the same or other coal lands by or under authority of the government and for other purposes: *Provided*, That said Secretary, in his discretion, in making any lease under this Act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted in so far as said surface is not necessary for use by the lessee in extracting and removing the deposits of coal therein. If such reservation is made, it shall be so determined before the offering of such lease.

"That the said Secretary during the life of the lease is authorized to issue such permits for easements herein provided to be reserved, and to permit the use of such other public lands in the Territory of Alaska as may be necessary for the construction and maintenance of coal washeries or other works incident to the mining or treatment of coal, which lands may be occupied and used jointly or severally by lessees or permittees, as may be determined by said Secretary.

Lease to Express Certain Terms.

"SEC. 12. That no lease issued under authority of this Act shall be assigned or sublet except with the consent of the Secretary of the Interior. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property, and for the safety and welfare of the miners and for the prevention of undue waste, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions securing the workers complete freedom of purchase, requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to secure fair and just weighing or measurement of the coal mined by each miner, and such other provisions as are needed for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare.

Possession of Lessee to Be Possession of the U. S.

"SEC. 13. That the possession of any lessee of the land or coal deposits leased under this act for all purposes involving adverse claims to the leased property shall be deemed the possession of the United States, and for such purposes the lessee shall occupy the same relation to the property leased as if operated directly by the United States.

Forfeiture by Decree.

"SEC. 14. That any such lease may be forfeited and canceled by appropriate proceeding in a Court of competent jurisdiction whenever the lessee fails to comply with any provision of the lease or of general regulations promulgated under this Act; and the lease may provide for the enforcement of other appropriate remedies for breach of specified conditions thereof.

Saving Clause.

"SEC. 15. That on and after the approval of this Act no lands

in Alaska containing deposits of coal withdrawn from entry or sale shall be disposed of or acquired in any manner except as provided in this Act: *Provided*, That the passage of this Act shall not affect any proceeding now pending in the Department of the Interior, and any such proceeding may be carried to a final determination in said department notwithstanding the passage hereof: *Provided further*, That no lease shall be made, under the provisions hereof, of any land, a claim for which is pending in the Department of the Interior at the date of the passage of this Act, until and unless such claim is finally disposed of by the department adversely to the claimant.

Statements to Be Verified. Forms. Blanks.

"SEC. 16. That all statements, representations, or reports required, unless otherwise specified, by the Secretary of the Interior, under this Act shall be upon oath and in such form and upon such blanks as the Secretary of the Interior may require, and any person making false oath, representation, or report shall be subject to punishment as for perjury.

Regulations.

"SEC. 17. That the Secretary of the Interior is authorized to prescribe the necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act.

Repealing Clause.

"SEC 18. That all Acts and parts of Acts in conflict herewith are hereby repealed."

PRESIDENTIAL RESERVES.

As directed by the second section of the above Act the following lands were reserved to the United States.

Lands Reserved in Matanuska Field, Seward Base and Meridian.

(1) T. 19 N., R. 6 E.: N. $\frac{1}{2}$ NE. $\frac{1}{4}$ and N. $\frac{1}{2}$ NW. $\frac{1}{4}$ sec. 4; NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ sec. 5.

T. 20 N., R. 6 E.: Lot 6 and E. $\frac{1}{2}$ SE. $\frac{1}{4}$ sec. 31; Lots 4, 5, 6, and 7 and SE. $\frac{1}{4}$ and SW. $\frac{1}{4}$ sec. 32; Lots 3, 4, 5, and 6, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, and SW. $\frac{1}{4}$ sec. 33, containing 1,446.17 acres.

(2) T. 20 N., R. 5 E.: NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$ and E. $\frac{1}{2}$ SW. $\frac{1}{4}$ sec. 20; NW. $\frac{1}{4}$, SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ and S. $\frac{1}{2}$ NE. $\frac{1}{4}$ sec. 21; SW. $\frac{1}{4}$ and S. $\frac{1}{2}$ NW. $\frac{1}{4}$ sec. 22; NW. $\frac{1}{4}$ sec. 27; NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ sec. 28; E. $\frac{1}{2}$ NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ sec. 29, containing 1,880 acres.

Lands Reserved in Bering River Field, Copper River Base and Meridian.

(3) T. 16 S., R. 8 E.: Secs. 23 and 24, containing 1,280 acres.

(4) T. 16 S., R. 8 E.: NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ and SW. $\frac{1}{4}$, sec. 33.

T. 17 S., R. 8 E.: N. $\frac{1}{2}$ NW. $\frac{1}{4}$ sec. 3; All of sec. 4; E. $\frac{1}{2}$ NE. $\frac{1}{4}$ and E. $\frac{1}{2}$ SE. $\frac{1}{4}$ sec. 5; E. $\frac{1}{2}$ NE. $\frac{1}{4}$ sec. 8; N. $\frac{1}{2}$ NW. $\frac{1}{4}$ sec. 9, containing 1,520 acres.

(5) T. 17 S., R. 7 E.: Lot 3 and SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ sec. 8; Lots 1 and 2, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ NE. $\frac{1}{4}$ sec. 9; NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ sec. 16; SE. $\frac{1}{4}$, NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ and W. $\frac{1}{2}$ S.W. $\frac{1}{4}$ sec. 17; NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$ and lots 3 and 4 sec. 18, containing 1,556.98 acres.

Lands Reserved in Nenana Field, Fairbanks Meridian.

T. 11 S., R. 7 W., SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ sec. 29, All of sec. 32.

T. 12 S., R. 7 W., S. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 4, All of sec. 5, containing 1,560 acres. Leasing Blocks 2 and 3.

As the Act required a survey before the lands could be blocked or offered for lease, the Bering River and Matanuka fields were surveyed and thereafter the following regulations were adopted applicable to those fields. May 18, 1916, 45 L. D. 113.

GENERAL REGULATIONS.

(1) By authority of the Act of Congress approved October 20, 1914 (38 Stat. 741), the unreserved surveyed coal lands in the Bering River and the Matanuska coal fields, Alaska, have been divided into leasing blocks, or tracts, of 40 acres, or multiples thereof, and leases of such blocks or tracts, with the privi-

lege of mining and disposing of the coal, lignite, and associated minerals therein may be procured from the United States in the following manner:

(2) On request addressed to the Commissioner of the General Land Office at Washington, D. C., a blank application and lease will be furnished the applicant; also, those who desire may procure from the Superintendent of Documents, Government Printing Office, Washington, D. C., a folio containing photolithographic copies of the approved plats of the topographic and subdivisional township surveys of the Mantanuska field (13 townships) for \$1, and of the Bering River field (8 townships) for 75 cents.

(3) From and after June 1, 1916, for a period of 30 days,¹ applications for coal-mining leases will be received at the General Land Office from duly qualified applicants.

Under this Act the qualifications of such lessees are defined as follows:

(a) Any person above the age of 21 who is a citizen of the United States;

(b) Any association of such persons (that is, citizens of the United States over 21 years of age);

(c) Any corporation or municipality organized under the laws of the United States, or of any State or Territory thereof, "*Provided*, That a majority of the stock of such corporation shall at all times be owned and held by citizens of the United States."

(4) The total area that may be embraced in one lease is fixed at 2,560 acres, which may include one or more contiguous leasing blocks, or tracts, as shown on the map; and no person, association, or corporation is permitted to take or hold any interest as a stockholder or otherwise in more than one lease under this act.

(5) The application blank calls for information as to the name of the applicant, a description of the leasing block or blocks desired, amount of capital proposed as an investment under the lease, time when actual development under the lease will

¹ Extended to August 1, 1916, 45 L. D. 150.

begin, experience in coal mining, and reference as to financial standing.

(6) The Statute under which these proceedings are authorized provides that the Secretary of the Interior may award leases "through advertisement, competitive bidding, or such other methods as he may by general regulation adopt," and the purpose of the applications required herein is to procure such information as will best enable the Secretary to award leases so as to procure the best terms on behalf of the United States, and the most effective development of the coal deposits of the Territory.

(7) When the time fixed for filing such applications shall have expired all applications then on file will be promptly listed and the proposed terms thereunder will be noted. Thereafter due publication at the expense of the government for not less than once a week for a period of thirty days will follow in at least two newspapers of general circulation, one of which shall be published in the Territory of Alaska and one in the United States proper, of the applications filed, each to be designated by a number and not by the name of the applicant, the block or blocks applied for, with the announcement that at the expiration of the period of publication the said applications will be taken up and the proposals therein considered, subject to any better terms that may be offered by any other qualified applicant during the period of publication, or by the first applicant. Amendment of Dec. 3, 1917, 46 L. D. 262.

(8) All applications for a lease, or proposals in connection therewith, pending at the expiration of the period of publication will be submitted to the Secretary of the Interior in one report, with specific recommendations as to the awards that should be made or denied under the several applications or proposals; and thereafter such action will be taken by the Secretary on the report as may in his discretion seem warranted on the showing made in each case, by which he will obtain the largest investment proportionate to the acreage of the lease, and the earliest actual development of the coal mine on a commercial basis, reserving the right to modify proposed leasing blocks, or tracts, if the economical mining of the coal will better be

procured thereby, or finally to reject any or all applications if, in his judgment, the interests of the United States so require.

(9) An actual beneficial expenditure on the ground for mining development and improvement purposes of \$100 for each acre included within the lease for which application is made will be adopted as the minimum basis upon which the proposed investments of the several applicants will be considered and adjudged, with the requirement that not less than one-fifth of the proposed investment shall be expended in the development of the mine during the first year, and a like sum each succeeding year, for the period of four years following the execution of the lease; excess investments in any year over such proportionate amount to be credited on the expenditure called for in the year ensuing. A bond, to be executed within 10 days after the signature of the lease, in the sum of one-half the amount to be expended each year will be required of each lessee conditioned upon the expenditure of such sum within said period.

(10) The procedure prescribed in the foregoing is to procure the orderly consideration of all applications or proposals that may be submitted in accordance with the foregoing regulations and within the period of time therein fixed; but when final action shall have been taken by the department upon the applications or proposals thus submitted any qualified applicant may thereafter apply for a leasing block or tract, and his application will be received and disposed of in the same manner and after like publication as herein provided.

(11) Lands found to contain coal but not divided into leasing blocks may be hereafter divided into such blocks, and the lands therein made the subject of a leasing offer, the rights of adjacent lessees to be given due consideration in any award that may be made under such offer.

PROSPECTING.

The coal-leasing act makes no provision for the right of an intending lessee to enter upon and explore coal fields embraced within a lease offer prior to submission of his application for a lease.

Such a right, if existent, would by implication carry with it

some protection from the interference of others while engaged in such inspection as well as the exclusive benefit of any discoveries made thereby and amount in effect to a preference right based upon discovery; otherwise the right of exploration would be an empty privilege.

The entire scheme of section 3 of the Act which governs the manner in which leases shall be awarded goes upon the theory that the Government is to offer "known" coal lands for leasing without priority of right recognized in either discovery, "opening a mine," or application, and "awarding leases thereof through advertisement, competitive bidding, or such other methods as he (the Secretary of the Interior) may by general regulations adopt."

All prospective applicants, however, will be accorded every opportunity to enter upon, inspect, and explore these coal fields at their pleasure in so far as such action may be necessary to acquire a thorough knowledge of field conditions, but no possessory or other right, either as against other prospectors or applicants or the United States, shall be acquired thereby.

USE OF TIMBER.

The use of timber by the lessee, in addition to that taken from the leasehold under the terms of the lease, may be secured by him from other lands not embraced in leasing units in accordance with the regulations that may be prescribed by the Secretary of the Interior under the act of May 14, 1898 (30 Stat. 414), and the acts amendatory thereof; or by arrangement with the Department of Agriculture, if from a national forest.

LEASES AND PERMITS AND APPLICATIONS THEREFOR.

COAL-MINING LEASE.

Date. Parties.

This INDENTURE OF LEASE, entered into, in quintuplicate, this days of, A. D., 19...., by and

between the United States of America, acting in this behalf by Secretary of the Interior, party of the first part, hereinafter called the lessor, and party of the second part, hereinafter called the lessee, under and pursuant to the act of Congress, approved October 20, 1914 (38 Stat. 741), entitled "An act to provide for the leasing of coal lands in the Territory of Alaska, and for other purposes," hereinafter called the "coal leasing Act."

Purposes. Description of Land. Mining and Surface Rights.

WITNESSETH

That the lessor, in consideration of the rents and royalties to be paid and the covenants to be observed as hereinafter set forth, does hereby grant and lease to the lessee, for the period of fifty years from the date hereof, the exclusive right and privilege to mine and dispose of all the coal and associated minerals in, upon or under the following described tracts of land, situated in the Territory of Alaska, to wit: containing acres, more or less, together with the right to construct coke ovens, briquetting plants, by-products plants, and all such other works as may be necessary and convenient for the mining and preparation of coal and associated minerals for market, the manufacture of coke or other products of coal, and to use so much of the surface and the sand, stone, timber and water thereon as may reasonably be required in the exercise of the rights and privileges herein granted, the use of such timber to be subject to such regulations as may be prescribed by the Secretary of the Interior under the Act approved May 14, 1898 (30 Stat. 414), and the Acts amendatory thereof.

Rights Reserved by Lessor.

ARTICLE I.

SECTION 1. The lessor expressly reserves unto itself the right to grant or use such easements in, over, through or upon the land leased, entered, located, occupied, or used as may be neces-

sary or appropriate to the working of the same or other coal lands by or under authority of the government and for other purposes; also the right to use, lease, or dispose of so much of the surface of the said lands as may not be actually needed, or occupied by the lessee in the conduct of mining operations.

Lease Subject to "Coal Leasing Act."

ARTICLE II.

It is expressly understood and agreed, that this lease is granted subject in all respects to the conditions, limitations, penalties and provisions contained in the "Coal Leasing Act," which Act is hereby made a part hereof to the same extent as if incorporated herein.

Mining Rights Limited to Coal and Associated Minerals.

ARTICLE III.

It is further expressly understood and agreed that the mining rights and privileges leased as aforesaid shall extend to and include only coal and associated minerals, as hereinafter defined, and that no rights or privileges respecting any other kind or character of mineral, or mineral substance whatsoever, are granted or intended to be granted by this lease.

ARTICLE IV.

The lessee in consideration of the lease of the rights and privileges aforesaid hereby covenants and agrees as follows:

Investment.

SECTION 1. To invest in actual mining operations upon the leasing block included herein, the sum of dollars of which sum not less than one-fifth shall be so expended during the first year succeeding the execution of this instrument, and a like sum each succeeding year for the period of four years; to furnish a bond, within ten days after signature of the lease,

in the sum of one-half the amount to be expended each year, conditioned upon the expenditure of such sum within said period, and submit annually, at the expiration of each year for the said period, an itemized statement, as to the amount and character of the expenditure during said year.

Annual Rental.

SEC. 2. To pay as an annual rental for each acre or part thereof covered by this lease, the sum of 25 cents per acre for the first year, payment of which amount is hereby acknowledged, the sum of 50 cents per acre per year for the second, third, fourth, and fifth years, and \$1 per acre for the sixth and each succeeding year during the life of this lease, all such annual payments of rental to be made on the anniversary of the date hereof, and to be credited on the first royalties to become due hereunder during the year for which said rental was paid.

Royalty.

SEC. 3. To pay a royalty of 2 cents on every ton of 2,000 pounds of coal shipped or removed from the leased lands or manufactured into coke, briquets or other products of coal, or consumed on the premises, during the first five years succeeding the execution of this lease, and 5 cents per ton for the next twenty years. Royalties shall be payable at the end of each calendar month next succeeding that of the said shipment, removal, donation, manufacture or consumption.

Lessee to Keep Record of All Coal Shipped.

SEC. 4. To accurately weigh all coal shipped or removed from the leased premises, sold, or donated to local trade, manufactured into coke, briquets, or other products of coal, or otherwise consumed or utilized, and to accurately enter the weight or weights thereof in due form in books to be kept and preserved by the lessee for such purpose, together with the car numbers, if any, of the coal shipped by rail.

Reports to Be Furnished Monthly by Lessee.

SEC. 5. To furnish in manner and form and at such time during each calendar month as the lessor shall prescribe, but in no event later than the last day thereof, the following written reports covering the month immediately preceding, certified under oath by the superintendent at the mine, or by such other agent on the property having personal knowledge of the facts as may be designated by the lessee for such purpose, to wit:

A report copied from the books required to be kept at the mine under section 4 of this article showing the facts required to be entered therein; a report of the number of mine cars of mine-run coal hoisted or trammed from each coal bed of each separate mine; a report showing the quantity, size, and character of coal shipped, used for power purposes and lease consumption; donated to employees, manufactured into coke, briquets, or other products or by-products of coal; in storage on the premises, with the quantity of coal of various sizes added thereto and taken therefrom during the month.

ARTICLE V.**Periods for Readjustment of Royalty.**

It is mutually understood and agreed that the lessor shall have the right to readjust and fix the royalties payable hereunder at the end of twenty-five years from the date hereof, and at the end of fifteen years thereafter, and thereafter at the end of each succeeding ten year period during the continuance of this lease: *Provided*, That in any such readjustment the royalty fixed shall not exceed 5 per cent of the average selling price of coal of like character at the mine, per ton of 2,000 pounds in the coal field embracing the tracts covered by this lease, as shown by the books of the lessees operating in said field during a period of five years next preceding such readjustment.

ARTICLE VI.

This lease is made subject to the following provisions, which

the lessee accepts and covenants faithfully to perform and observe:

Mining Operations to Be Energetically Prosecuted. Workings Not to Be Abandoned until Examination Made.

SECTION 1. The lessee shall diligently proceed to prospect for, develop, and mine the coal in or upon the leased lands; shall carry on all mining operations in a good and workmanlike manner, having due regard to the health and safety of miners and other employees; and shall leave no available coal abandoned which could be recovered by the most approved methods of mining when in the regular course of mining operations the time shall arrive for mining such coal. No mine, entry, level, or group of rooms or workings shall be permanently abandoned and rendered inaccessible, save with the approval of the authorized representative of the lessor.

Preliminary Plan of Mining to Be Submitted in Advance of Operations on a Commercial Scale.

SEC. 2. And also shall develop and mine the coal in the leased lands in accordance with a system to be shown by a preliminary plan on a scale of not more than 200 feet to the inch and a written description thereof, which plan and description shall be submitted for approval by the authorized representative of the lessor.

Where Two or More Beds of Coal, Pillars in Lower Beds to Be Left until Coal in upper Beds Extracted. Exceptions. Pillars in Lower Beds to Be Arranged Vertically under Pillars in Upper Beds.

SEC. 3. And also where more than one bed of coal is known to exist in the leased lands, shall not draw or remove the pillars in any lower bed, before the available coal in any or all upper beds has been mined, unless it shall be decided by the authorized representative of the lessor that the workings in any or all of the upper beds will not be seriously injured by the extraction of the pillar coal in the lower workings. Where min-

ing operations are being carried on in a bed that lies either below or above another bed in which mining has been or is being carried on and in which the pillars have not been pulled, and where the vertical distance between the two beds is less than fifteen times the thickness of the lower of the two beds, the lessee shall, as far as practicable, so arrange the pillars that those in the lower bed shall be vertically beneath those in the upper bed. Where practicable, by reason of either commercial or mining conditions, the available coal in the upper beds shall be exhausted before the coal in the lower beds is mined.

Fifty-foot Barrier Pillars. Lessee May Be Required to Mine Barrier Pillars on Adjacent Lands.

SEC. 4. And also shall not, without the consent in writing of the authorized representative of the lessor first had and obtained, mine any coal, or drive any underground working, or drill any lateral bore hole within 50 feet of any of the outside boundary lines of the leased lands, nor within such greater distance of such boundary lines, as the said representative shall prescribe for the protection of the property or the safeguarding of mining operations hereunder; but in the event the coal up to the like barrier in adjoining premises shall have been worked out and exhausted, and the water therein shall have been lowered below the working level of the operations on the same bed on the lands covered by the lease, the lessee hereunder hereby agrees, upon the written demand of said representative, to mine out and remove all the available coal in such barriers, both in the lands covered by this lease and on the adjoining premises, whenever same can be mined without hardship to the lessee and where the coal-mining rights in such adjoining premises are owned by the lessor.

Limitations of Coal to Be Recovered in Advance Workings Under "Room-and-Pillar" System.

SEC. 5. And also where the "room-and-pillar," or any other system of mining is followed which requires advance workings in the solid coal, including entries, break-throughs, and rooms,

instead of a system of mining under which all the coal is mined out and extracted as the work advances, shall not, without the consent in writing of the lessor being first had and obtained, mine and remove from such advance workings more than the following maximum percentages of the coal area for the specified depths of cover, viz:

Not more than 70 per cent where the cover is 100 feet or over but less than 200 feet in depth; not more than 65 per cent where the cover is 200 feet or over but less than 300 feet in depth; not more than 60 per cent where the cover is 300 feet or over but less than 400 feet in depth; not more than 55 per cent where the cover is 400 feet or over but less than 500 feet in depth; not more than 50 per cent where the cover is 500 feet or over but less than 750 feet in depth; not more than 45 per cent where the cover is 750 feet or over but less than 1,000 feet in depth; not more than 40 per cent where the cover is 1,000 feet or over but less than 1,250 feet in depth; not more than 35 per cent where the cover is 1,250 feet or over but less than 1,500 feet in depth; not more than 30 per cent where the cover is 1,500 feet or over but less than 1,750 feet in depth; not more than 25 per cent where the cover is 1,750 feet or over but less than 2,000 feet in depth; not more than 20 per cent where the cover is 2,000 feet or over.

Definition of Term "Percentage of Area." Pillars to Be Removed as Rapidly as Possible. Exceptions.

The said coal areas shall mean an area parallel with the dip or raise of the coal bed. The percentages of coal areas specified shall mean the percentages of coal to be mined in the areas comprised in the advance workings as compared with the percentages of coal to be left standing in such workings, and shall not be construed to mean the percentage of the total amount of coal in any such area of any such bed, where such bed in such area is thicker than the height of any such workings, nor shall such percentages of areas be held to include the coal extracted from the pillars in any such area, panel, or district of the mine, as it is the intent of the parties hereto that save as otherwise provided in this lease, and except where the retention of pillars

shall be necessary for the maintenance of main roads or passageways or for the protection of the property, all such pillars shall be mined and removed as rapidly as proper mining will permit.

Fires in Mine Prohibited.

SEC. 6. And also shall not, save as hereinafter authorized, light, keep, or maintain any fire in any mine or stripping, except as approved by the authorized representative of the lessor, or underground in any mine, or in contact with the coal in place or in or along the outcrop of any coal bed. Failure to take prompt and vigorous steps for the extinguishment of any such fire shall be sufficient ground for the entry of the lessor and the cancellation of this lease.

Discovery of Valuable Mineral Substances other than Coal to Be Reported. Lessee to Have Free Use of Fire Clay and Natural Gas for Lease Purposes. Record of Associated Minerals Mined to Be Kept.

SEC. 7. And also shall promptly notify the authorized representative of the lessor of the discovery of any valuable mineral or mineral substance other than coal in the course of mining operations hereunder, and shall not mine or remove same unless the same is an associated mineral as hereinafter defined: *Provided*, That such quantities of fire clay, shale, or gas from the coal measures as may be required by the lessee in the conduct of operations hereunder may be removed and used without such written permission and without payment of royalty therefor. The lessee shall keep careful and accurate record in manner and form as may be prescribed by the lessor of all such associated minerals mined, used, or carried away, and shall pay such rates of royalty thereon as may be fixed by the said lessor, except as above provided.

Mine Map Required to Be Kept at the Mine Office.

SEC. 8. And also shall keep at the mine office clear, accurate, and detailed maps on a scale of 100 feet to the inch, in the

form of a horizontal projection on tracing cloth, of the workings in each coal bed in each separate mine on the leased lands, a separate map to be made for each such bed, and for the surface immediately over the underground workings, and to be so arranged with reference to a public land corner that the maps can be readily superimposed.

Things Required to Be Shown on Detailed Map of Workings.

Each map of the workings in any coal bed shall show the location of all openings connecting such bed with the workings in any other bed, or with any adjacent mine, or with the surface; the location of all entries, gangways, rooms, or breasts, and any other narrow or wide workings, including the outlines of abandoned workings, and record of whether accessible or inaccessible; also barrier pillars, refuge chambers, stoppings, ventilating doors, overcasts, undercasts, regulators, and direction of air currents at the time of making map; location of stationary haulage and hoisting engines; permanent electrical generators, dynamos, and transformers; indications of trolley roads throughout their extent; also fire walls, sumps, and large bodies of standing water; position of main pumps and fire pipe lines; there shall also be marked on such maps the elevations above or below sea level or approved datum at points not over 200 feet apart horizontally, or over 100 feet apart vertically, in all main slopes, entries, levels, or headings, together with the thickness of coal beds at such intervals, and the elevations at the tops and bottoms of all shafts, slopes, and inclines.

Requirements for Map of Surface over Working.

The map of the surface immediately over the mine workings shall show all prominent topographic features and culture, section and township lines, the elevations above sea level or an approved datum, and contours at vertical intervals of 25 feet of such topographic features. Such map, together with the maps of the underground workings, shall be brought up to date not less than once in every six months.

Things Required to Be Shown on General Property Map to Be Kept at Mine Office.

The lessee shall also make and keep at the mine office, at such time after the commencement of mining operations as the authorized representative of the lessor may direct, a clear and accurate general map of the entire leased lands, on a scale of 400 feet to the inch. Such map shall show all prominent topographical features and culture; the location of the surface areas immediately over the mine workings shown on the detailed surface map hereinbefore required; township, section, and property lines; the location of high-water marks; the outline of coal outcrops where known; the outlines of the chief mine workings, indicating the workings in each separate coal bed by distinguishing marks and the elevations above sea level or an approved datum, and contours at vertical intervals of 25 feet of the chief topographic features. Such map shall be brought up to date not less than once in every six months.

Prints of Maps to Be Furnished Lessor.

Blue prints or reproductions in duplicate of the maps required as aforesaid shall be furnished the authorized representative of the lessor when made, and supplemental prints or reproductions in duplicate furnished on or before January 1 of each succeeding year, showing the extensions, additions, and changes since the last map or supplement was submitted. All mine progress maps kept by the lessee shall at all times be subject to examination by said representative.

Abandoned Areas to Be Surveyed and Mapped.

The lessee whenever any mine, or any workings therein are to be abandoned or indefinitely closed, and before same shall be abandoned or closed, or allowed to become inaccessible, shall make a survey thereof so as to accurately show the entire worked-out area or areas, and shall extend the results of such survey on the map or maps of the underground workings hereinbefore required, and promptly forward blue prints or reproductions thereof in duplicate to the said representative.

Maps May Be Made at Lessee's Expense in Case of Failure to Furnish.

If the lessee shall fail to make or furnish any map or extension or revision as herein required within 90 days after demand therefor shall have been made by the authorized representative of the lessor, such representative may employ a competent engineer to make a survey of the mine, and plat the same as above provided, the expense thereof to be paid by the lessee, and in the event that the lessee shall fail to make such payment within 60 days after demand therefor by the authorized representative of the lessor, such failure shall constitute a cause of forfeiture of this lease.

Second Exit to Surface to Be Provided, Where More Than Ten Men Employed on a Shift. Outlet Through Adjacent Mine Sufficient Compliance.

SEC. 9. And also shall, where more than ten men are employed underground on any one shift in any separate mine, provide an escapeway or second exit to the surface, which shall be separated at the surface from the first exit by not less than 50 feet of strata in case of drift, slope, or tunnel workings, or in case of vertical shafts, or of inclined shafts having a pitch of more than 45°, by not less than 200 feet of strata. An escapeway or outlet through an adjoining mine shall be regarded as a satisfactory compliance with this requirement if kept at all time in proper condition for use. If such adjoining mine shall be abandoned at any time, or shall cease to operate indefinitely, the lessee hereunder shall be solely responsible for the cost and expense of maintaining such outlet, and in the event such outlet shall be abandoned or permitted to become unsafe for use, the number of men employed on any one shift shall be reduced below ten until such time as a second exit or escapeway shall be provided.

Not More Than Five Men to Be Employed in New Workings Unless Second Opening Provided. Exceptions.

SEC. 10. And also shall not employ more than five men underground on any one shift in any new working of any mine unless

such new working shall be so connected with adjacent workings as to provide two distinct and separate means of escape from such new working: *Provided*, That with the approval of the authorized representative of the lessor, not exceeding ten men may be so employed in advance of the making of such second opening, but in no case shall any rooms, drifts, or slopes be opened or worked until such second opening is constructed.

No Building of Inflammable Material to Be Constructed within 75 Feet of Any Mine.

SEC. 11. And also shall not construct or maintain any structure of inflammable material within 75 feet of any mine opening; nor within said distance permit any structure of noninflammable material to be connected to any other structure by means of any structure or erection of inflammable material, or to be connected to any structure beyond said distance which shall be constructed of inflammable material, except as follows, that is to say:

Exceptions.

(a) An open timber framework or headframe of timber may be constructed over a shaft, slope, or incline.

(b) The posts, studs, and rafters of any such structure may be of wood if the covering or lining is made of noninflammable material, but under no circumstances shall wood flooring be used, except in tipple and trestle structures.

Main Intake and Return Airways to Be Separated by Not Less Than 50 Feet of Natural Strata. Pillars to Be Left Standing Until Prior to Final Abandonment of Mine.

SEC. 12. And also, except in a prospect opening, shall separate the main intake and return airways and all workings parallel to such airways by not less than 50 feet of strata except for break-throughs or crosscuts for ventilation or haulage, and shall provide for such greater distance between such airways or between any such airway and parallel workings as may be required in the judgment of the authorized representative of the lessor. The lessee agrees that the pillars thus provided for

shall be left standing until in the proper course of mining operations the time shall arrive for their removal immediately prior to the final abandonment of the workings in that particular coal bed.

Ventilating Fan to Be Provided Where More Than 10 Men Employed on Shift. Fan Not to Be Placed in Direct Line with Any Mine Entrance. With Written Approval of Lessor's Representative Furnace May Be Used for Ventilation under Specified Conditions.

SEC. 13. And also shall whenever more than ten men are employed underground on any one shift provide a fan or other mechanical means for circulating such amount of ventilating current as may be required by any law of the United States or of the Territory of Alaska now or hereafter enacted or by the rules and regulations prescribed by the lessor, such fan or other mechanical means and the connection between same and the point of the entrance of the air current into the mine to be made of noncombustible material; and the lessee shall not set same in line with the axis of any mine opening, but shall place same at a distance of not less than 15 feet from the projection of the nearest side of such opening, and shall provide explosion doors of the full area of the air shaft or airway, in direct line with any and all such mine openings in order to protect said fan or other mechanical means of air circulation in case of a mine explosion: *Provided*, That during such time as the mine is being opened up and less than ten men are employed underground on any one shift, and with the written approval of the authorized representative of the lessor, a furnace may be used for ventilation in a nongaseous mine if the fire box thereof is inclosed by brick, rock, or concrete walls, and a passageway around such inclosure at least two feet in width provided: *And provided further*, That if a wooden stack is used in connection with such furnace the lessee shall not permit such stack to be in contact with any coal bed or with any inflammable shale.

Slack and Refuse to Be Disposed of so as Not to Become a Public or Private Nuisance.

SEC. 14. And also shall make such provisions for the dis-

posal of the waste, slack, and refuse of the mine that the same shall not be a nuisance, inconvenience, or obstruction to any right of way, stream, or other means of transportation or travel, or to any private or public lands, or embarrass the operation of any other mine on the leased lands, or on adjoining lands, or in any manner occasion private or public damage, nuisance, or inconvenience. All waste containing practically no coal shall be deposited separate and apart from waste containing coal and in accordance with the directions of the authorized representative of the lessor.

Abandoned Workings to Be Covered or Fenced.

SEC. 15. And also shall upon abandonment substantially fence, fill in, cover, or close all surface openings or workings where persons or animals are likely to be injured by falling therein, or endangered by accumulations of gas, except as the lessor shall otherwise direct; and shall maintain all such fencing or covering in a secure condition during the term hereof.

Operations Subject to Inspection of Lessor's Representatives. Lessee to Furnish All Necessary Assistance.

SEC. 16. And also expressly agrees that all mining and related operations shall be subject to the inspection of authorized representatives of the lessor, and that such representatives, with all proper and necessary assistants, may at all reasonable times enter into and upon the leased lands and survey and examine same and all surface and underground improvements, works, machinery, equipment, and operations, and further expressly agrees to furnish said representatives and assistants all necessary assistance, conveniences, and facilities in making any such survey and examination.

Lessee to Permit Examination of Books for Purpose of Checking Royalty Returns.

SEC. 17. And also shall permit any authorized representative of the lessor to examine all books and records pertaining to operations under this lease, and to make copies of and extracts

from any or all of same, if desired. The information so derived to be held confidential.

Lands Leased and Easements Therein May Be Used for Purposes of Rendering Operations on Adjoining Lands More Safe; such Use to Be Compensated for.

SEC. 18. And also shall permit the lessor, its lessees, or transferees to make and use upon or under the leased lands any workings necessary for freeing any other mine from water, causing as little damage or interference as possible to or with the mine or mining operations of the lessee hereunder. Any such use by a lessee or transferee shall be conditioned upon the payment to the lessee hereunder of the amount of actual damages sustained thereby and adequate compensation for such use.

Lessee to Keep True and Accurate Weights or Measurements of Coal Mined and Loaded by Miners. Weighman to Take Oath for Faithful Discharge of Duties. Miners to Be Permitted to Employ Checkweighman. Checkweighman to Take Oath for Faithful Discharge of His Duties.

SEC. 19. And also shall accurately weigh or measure in the car and truly account for the coal mined and loaded by each miner, where the miners are paid either by the weight of their output or upon the basis of the measurement of the coal in the car; keep a correct record of all coal so weighed or measured; post or display such record daily for the inspection of the miners and other interested persons; and require the weighman or person appointed to measure the coal in the car where the miners are paid upon the basis thereof, before entering upon his duties, to make and subscribe to an oath before some person duly authorized to administer oaths that he will accurately weigh or measure and keep true record of the coal so weighed or measured and credit same to the miner entitled thereto, such affidavit to be kept conspicuously posted at the place of weighing, if any, but nothing contained herein shall be construed to prevent the lessee, in case rock and bone is loaded by the miner, from estimating or separately weighing, and deducting the

amount thereof from the weights of coal accredited to such miner. The lessee hereby agrees that if a majority of the miners employed on the leased lands so desire they shall be permitted to employ at their own expense one of their fellow employees to see that the coal is properly weighed or measured and that a correct account of same is kept, and agrees to afford such person every facility to certify the weights and measurements while the weighing or measuring is being done: *Provided*, That the lessee shall not be required to so do unless such person, before entering upon his duties, shall make and subscribe to an oath before some person authorized to administer oaths that he will faithfully discharge the duties of his position, such oath to be kept conspicuously posted at the place of weighing, if any.

Wages to Be Paid in Lawful Money. Freedom of Purchase to Be Allowed. Eight-hour Work Day Required.

SEC. 20. And also shall pay all miners and other employees, both above and below ground, at least twice each month in lawful money of the United States, and shall permit such miners and other employees full and complete freedom of purchase, but with a view to increasing safety this provision shall not apply to the purchase of explosives, detonators or fuses, and shall not require or permit miners or other employees, except in case of emergency, to work underground for more than eight consecutive hours in any one calendar day, not including time for lunch or meals, or the time required to reach the usual working place.

Premises to Be Surrendered in Proper Condition for Continuance of Mining Operations.

SEC. 21. And also shall, at the expiration or earlier termination of this lease, deliver up to the lessor the lands covered by this lease, together with all fixtures, improvements, and appurtenances, save as hereinafter provided, in such a secure and proper state that mining operations may be continued immediately to the full extent and capacity of such mine.

ARTICLE VII.

It is further mutually understood and agreed as follows:

Suspension of Operations for More than Three Months without Consent to Be Cause of Forfeiture. Upon Application Consent for Suspension for a Specified Period May Be Obtained.

SECTION 1. That the suspension of mining operations by the lessee for a longer period than three months without the consent in writing of the lessor or its authorized representatives shall be cause of forfeiture of this lease. If the lessee shall be unable to continue the operation of the mine for any cause, not due to the fault or negligence of the lessee, he shall be entitled to the suspension of operations for such a length of time, and upon payment of such minimum royalties, and such other conditions as may be specified in the order of suspension, but the issuance of any such order shall not excuse the payment of any rents or royalties due under this lease, or prevent forfeiture for failure to pay same, and the acceptance of any such rent or royalty shall not waive any other right of the lessor hereunder.

Lease Not to Be Assigned without Consent of Lessor.

SEC. 2. That the lessee shall not assign this lease or any interest therein, nor sublet any portion of the leased premises, or any of the rights and privileges herein granted, without the written consent of the lessor being first had and obtained.

Breach of Lease Covenants May Be Waived in Writing.

SEC. 3. That the lessor or its authorized representative may by notice in writing waive any breach of the covenants and conditions contained herein, except such as are required by the aforesaid "coal leasing act," but any such waiver shall extend only to the particular breach so waived, and shall not limit the rights of the lessor with respect to any future breach. No waiver not in writing shall be in any way binding upon the lessor.

Lease May Be Terminated at Any Time upon Payment of Rents, etc. Termination Not to Be Effective until Property Examined.

SEC. 4. That the lessee may terminate this lease at any time upon giving four months' notice in writing to the lessor or its authorized representative, and upon payment of all rents, royalties, and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, but in no case shall such termination be effective until the lessee shall have made provision for the preservation of any mine on the leased lands in accordance with the provisions of this lease: *Provided*, That in such case the right of valuation and purchase, accorded the lessor in the section next following (5), shall be exercised within said period of four months.

Lessor to Have Privilege of Valuing and Purchasing Equipment, etc., on Termination of Lease. Lessee May Remove Same within Year.

SEC. 5. That at the expiration or earlier termination of this lease all tools, machinery, and equipment, including tracks, rails, and pipe placed by the lessee in the mine or on the property, shall before removal from normal position, if requested by the lessor or its authorized representatives, be valued by three disinterested and competent persons to be chosen in the manner hereinafter provided for the appointment of arbitrators, the valuation of these three or of a majority of them to be conclusive of the value of any or all of the said property; and the lessor or its agent, licensee, or lessee shall have the right to purchase within four months thereafter any or all such tools, machinery, equipment, or materials at the said valuation, deducting therefrom all rents, royalties, or other payments at that time due and payable by the lessee. If such valuation shall not be requested or the purchase shall not be made within said time the lessee shall have the privilege of removing same from the premises within one year from the expiration or termination of this lease, provided all debts and moneys specified in section 4 of this arti-

de shall have been paid. The lessee shall not, and hereby covenants not to, remove any mine supports, timbers, or props in place. All buildings and improvements erected upon the leased lands shall become a part of the property, and machinery and equipment shall not be removed therefrom in such a way as to cause any permanent injury to such buildings or improvements.

Forfeiture of Lease.

SEC. 6. That if the lessee shall make default in the performance or observance of any of the terms, covenants and stipulations of this lease, and such default shall continue for 60 days after service of written notice thereof by the lessor or its authorized representatives, then all the rights and privileges of the lessee cease and determine, and the lessor may, by appropriate proceedings, have this lease forfeited and canceled in a court of competent jurisdiction.

A waiver of any particular cause of forfeiture shall not prevent the cancelation and forfeiture of this lease for any other cause of forfeiture or for the same cause occurring at any other time.

Questions Which May Be Submitted to Arbitration.

SEC. 7. That in case any dispute shall arise between the lessor and lessee as to any question of fact, or as to the reasonableness of any requirement made by the lessor under the provisions of this lease, in the matter of operation, methods, means, expenditures, use of easements, compensation for joint occupancy by another lessee of a portion of the leased premises, or such other questions as are not determined by express statutory provision, such questions or disputes shall be settled by arbitration in the manner provided for by this section, and the lessor and lessee hereby covenant and agree each with the other to promptly comply with and carry out the decision or award of each and every board of arbitration appointed under this section.

Manner of Appointing Arbitrators. Decision of Third Arbitrator to Be Final.

Questions in dispute to be determined by arbitration here-

under shall be referred to a board of arbitration consisting of three competent persons, one of which persons shall be selected by the lessor or its authorized representative, and one by the lessee, and the third by the two thus selected: *Provided*, That the lessor and lessee may agree upon one sole arbitrator or upon the third arbitrator. The party desiring such arbitration shall give written notice of the same to the other party, stating therein definitely the point or points in dispute, and name the person selected by such party hereto within twenty days after receiving such notice to name an arbitrator; and in the event it does not do so, the party serving such notice may select the second arbitrator and the two thus named shall select the third arbitrator. The arbitrators thus chosen shall give to each of the parties hereto written notice of the time and place of hearing, which hearing shall not be more than thirty days thereafter, and at the time and place appointed shall proceed with the hearing unless for some good cause, of which the arbitrators or a majority of them shall be the judge, it shall be postponed until some later day or date within a reasonable time. Both parties hereto shall have full opportunity to be heard on any question thus submitted, and the written determination of the board of arbitration thus constituted or of any two members thereof or, in case of the failure of any two members to agree, then the determination of the third arbitrator shall be final and conclusive upon the parties in reference to the questions thus submitted. All such determinations shall be in writing, and a copy thereof shall be delivered to each of such parties.

**New Board to Be Chosen in Event of Failure of Arbitrators
First Selected to Choose a Third.**

It is further agreed that in the event of the failure of the lessor and lessee, or of the two arbitrators selected as aforesaid by the parties hereto, within twenty days from notice to them of their selection, to agree upon the third arbitrator, then the Secretary of the Interior shall appoint such arbitrator.

The said third arbitrator shall receive not to exceed \$15 per day as full compensation for his services and for all expenses connected therewith, exclusive of transportation charges; but

such compensation shall not be in excess of \$150 for any arbitration. The losing party to such arbitration shall be liable for the payment of such compensation and transportation expenses of such third arbitrator.

SEC. 8. That any notice in writing as to any matter mentioned in this lease, addressed to the lessee and left upon the premises with the superintendent, manager, clerk, or other person in charge of the mine or of the office, or, in the absence of any such person, posted on the door of the office, shall have the same force and effect as if served upon the lessee, and fifteen days shall be considered a reasonable notice, unless a longer notice be herein provided for or be so provided in such notice.

ARTICLE VIII.

It is further expressly agreed and declared that the terms and phrases hereinafter mentioned shall have the meanings hereinafter assigned unless the context shall otherwise require, that is to say:

(a) The phrase "available coal" as used in this lease shall mean merchantable coal from any coal bed which, when reached in the prosecution of the lessee's operations hereunder, can be mined at a reasonable profit by the use of machinery and methods which at that time are modern and efficient.

(b) The term "coal" as used herein shall mean and include all underground workings now or hereafter opened or worked for the purpose of mining and removing coal and associated minerals, together with all buildings, machinery, and equipment, above and below ground, used in connection with such mining operations.

(c) The term "pit" or "open pit" shall mean and include stripping operations or any open-air workings.

(d) The term "coal" as used herein shall mean and include anthracite, semianthracite, semibituminous, bituminous, sub-bituminous, lignite, and graphitic coal, lignite, natural coke, and such bony coal as is suitable for use as a fuel.

(e) The term "associated minerals" as used herein shall mean and include fire clay, shale, sandstone, and the bedded materials

of the coal measures, exclusive of gold-bearing or other metalliferous deposits.

(f) The term "lessee" as used herein shall mean and include the heirs, executors, administrators, successors, or assigns of the lessee hereinbefore specified.

ARTICLE IX.

It is further mutually covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall enure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

ARTICLE X.

It is also further agreed that no member of or delegate to Congress or resident commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part in this lease, or derive any benefit that may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the United States and sections 114, 115, 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat., 1109) relating to contracts enter into and form a part of this lease so far as the same may be applicable.

In witness whereof—

THE UNITED STATES OF AMERICA,

By [L. S.]

Secretary of the Interior.

Witnesses:

.....

..... [L. S.]

APPLICATION FOR COAL-MINING LEASE.

The undersigned,
 a resident of
 a

(Native born or naturalized; if the latter, furnish certificate.)

citizen of the United States, over 21 years of age, hereby applies,
 under the provisions of the act of October 20, 1914 (38 Stat.,
 741), for a mining lease of the certain leasing blocks, or tracts,
 of coal lands, to wit: Block, embracing the following speci-
 fied legal subdivisions

.....
 aggregating acres. If I secure said lease, I propose to
 invest not less than dollars in active, productive
 mining operations conducted upon said lease; the active develop-
 ment will begin not later than My experience
 in coal-mining operations is as follows:

.....
 I neither own nor hold any interest, either as a stockholder or
 otherwise, in any lease under this act, or in any application for
 such a lease, save and except the application now made; and I
 hereby refer to

.....
 as to my financial standing.

If I am awarded a lease, I will supply a satisfactory bond as
 required in section 9 of the regulations.

My post-office address is

(Signed)

Subscribed and sworn to before me, a
, on this day of

[SEAL]

COAL-MINING PERMIT.

REGULATIONS GOVERNING THE ISSUANCE OF PERMITS FOR THE FREE USE OF COAL IN THE UNRESERVED PUBLIC LANDS IN ALASKA.

Section 10 of the **act of October 20, 1914** (Public 216), provides:

That in order to provide for the supply of strictly local and domestic needs for fuel the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue to any applicant qualified under section three of this act a limited license or permit granting the right to prospect for, mine, and dispose of coal belonging to the United States on specified tracts not to exceed ten acres to any one person or association of persons in any one coal field for a period not exceeding ten years, on such conditions not inconsistent with this act as in his opinion will safeguard the public interest without payment of royalty for the coal mined or for the land occupied: *Provided*, That the acquisition or holding of a lease under the preceding sections of this act shall be no bar to the acquisition, holding, or operating under the limited license in this section permitted. And the holding of such license shall be no bar to the acquisition or holding of such a lease or interest therein.

Owing to there being no settlements or local industries in or adjacent to the Bering or Matanuska coal fields, and the contemplated leasing offer of coal lands in said fields, these regulations and the permits provided for shall not at present apply to coal deposits in those fields.

Qualifications.

Under the terms of the act, expressed in section 3 thereof, only citizens of the United States above the age of 21 years, associations of such citizens, corporations, and municipalities organized under the laws of the United States or of any State or Territory thereof, provided the majority of the stock of such corporations shall at all times be owned and held by citizens of the United States, are eligible to receive a permit to prospect for and mine coal from the unreserved public lands in Alaska.

Who May Mine Coal for Sale.

All permittees may mine coal for sale except railroads and common carriers, who by the terms of section 3 of the act are restricted to the acquirement of only such an amount of coal as may be required and used for their own consumption.

Duration of Permits.

Permits will be granted for two years, beginning at date of filing, if filed in person or by attorney, or date of mailing, if sent by registered letter, subject to the approval of the Commissioner of the General Land Office, and upon application and satisfactory showing as to the necessity therefor, may be extended by the commissioner for a longer period, subject to such conditions necessary for the protection of the public interest as may be imposed prior to or at the time of the extension. Misrepresentation, carelessness, waste, injury to property, the charge of unreasonable prices for coal, or material violation of such rules and regulations governing operation as shall have been prescribed in advance of the issuance of a permit, will be deemed sufficient cause for revocation.

Limitation of Area.

The act limits the area to be covered in any one permit to 10 acres. It is not to be inferred from this, however, that the permits granted thereunder shall necessarily cover that area. The ground covered by a permit must be square in form and should be limited to an area reasonably sufficient to supply the quantity of coal needed.

Scope of Permit.

Permits issued under section 10 of the Act of October 20, 1914, grant only a license to prospect for, mine, and remove coal free of charge from the unreserved public coal lands in Alaska, and do not authorize the mining of any other form of mineral deposit, nor the cutting or removal of timber.

How to Proceed to Obtain a Permit.

The application should be duly executed on Form 4—020, and the same should either be transmitted by registered mail to, or filed in person with, the register and receiver of the United States land office of the district in which the land is situated. Prior to the execution of the application the applicant must have gone upon the land, plainly marked the boundaries thereof by substantial monuments, and posted a notice setting forth his intention of mining coal therefrom. The application must contain the statement that these requirements have been complied with and the description of the land as given in the application must correspond with the description as marked on the ground. The permit, if granted, should be recorded with the local mining district recorder, if the land is situated within an organized mining district.

When Coal May Be Mined before Issuance of a Permit.

In view of the fact that by reason of long distances and limited means of transportation many applicants may be unable to appear in person at the United States land office to file their applications, it has been deemed advisable to allow such applicants the privilege of mining coal as soon as their applications have been duly executed and sent by registered mail to the proper United States Land Office. Should an application be rejected, upon receipt of notice thereof all privileges under this paragraph terminate and the applicant must cease mining the coal.

Action by Register.

The register will keep a proper record of all applications received and all actions taken thereon in a book provided for that purpose. If there appear no reason why the application should not be allowed, the register will issue a permit on the form provided for that purpose. Should any objection appear either as to the qualifications of the applicant or applicants, or in the substance or sufficiency of the application, the register may reject the application or suspend it for correction or supplemental showing under the usual rules of procedure, subject to appeal to the Commissioner of the General Land Office. Up-

on the issuance of a permit the register will promptly forward to the Commissioner of the General Land Office, by special letter, the original application and a copy of the permit, and transmit copies thereof to the Chief of the Alaskan Field Division, and to the local representatives of the United States Bureau of Mines, for their information.

NOTE.—These regulations are intended merely as a temporary arrangement to meet immediate necessities, as authorized by section 10 of the act of October 20, 1914, and are not to be construed as applying to the leasing of public coal lands in Alaska provided in other sections of the act.

APPLICATION FOR COAL-MINING PERMIT.

....., 191
The Commissioner of the General Land Office,
Washington, D. C.

SIR: The undersigned,
 (Name of applicant.)

....., hereby appl for a permit to
 of
 (Post-office address.)
 prospect for, mine, and remove coal from the following-de-
 scribed land:

(Describe the land by legal subdivision if surveyed, and by
 metes and bounds with reference to some permanent natural landmark if un-
 surveyed.)

containing approximately acres, situated within the
 land district, miles of

(Direction.)
 Alaska, and in support of this application make the following
 representation as to qualifications to receive a permit:

(Citizenship

 of applicant or applicants must here be shown. If the applicant is a municipality

 or corporation, it must be shown under what laws it is organized; and if the

 latter, it must also be shown whether a majority of its stock is owned and held

 by citizens of the United States.)

The applicant further represent that ha not,
 (He, they, or it.)
 within two years last past, applied for or received a permit to
 mine coal under the provisions of section 10 of the act of October
 20, 1914, in the coal field in which the land described in this
 application is situated,
 (State exceptions here, if any.)

.....
 and that the coal herein applied for is to be mined for the pur-
 pose of supplying the following demands, for which approxi-
 mately tons are required annually:

(Here itemize the

 various uses to which the coal is to be applied, stating the number of tons

 necessary for each use.)

It is further represented that the boundaries of the tract de-
 scribed in this application have been plainly marked by sub-
 stantial monuments, and that a proper notice describing the
 land and showing the intention of the applicant to apply for a
 free permit to mine coal therefrom has been posted in a con-
 spicuous place upon the land.

On consideration that a permit be granted, the applicant
 hereby agree:

1. To exercise reasonable diligence, precaution, and skill in
 the operation of the mine, with a view to the prevention of in-
 jury to workmen, waste of coal, damage to government property,
 and to comply substantially with the instructions and the rules
 and regulations printed on the back of this application.
2. To charge only such prices for coal sold to others as repre-
 sent a fair return for the labor expended and reasonable earning
 value to which the investment in the enterprise is entitled, with-
 out including any charge for the coal itself.
3. Not to mine or dispose of, either directly or indirectly,
 any coal from the area covered by said permit for export or any
 purpose other than "strictly local and domestic needs for fuel."
4. To leave the premises in good condition upon the termina-
 tion of the permit, with all mine props and timbers in the mine
 intact, and with the underground workings free from refuse and
 in condition for continued mining operations.

Signature of applicant

The foregoing application was signed by

 of, the applicant therein, in the presence
 of the undersigned, who, at request and in
 (His or their.) (His or their.)
 presence and in the presence of each other, have subscribed our
 names as witnesses to the execution thereof.

Dated this day of, 19..., at
 Territory of Alaska.

Name	Residence
Name	Residence

THE NENANA FIELD.

After the opening of the Nenana coal field the above printed regulations were adopted for that field, subject to the modifications noted below. Feb. 13, 1918.

GENERAL REGULATIONS.

The regulations governing coal-land leases in the Territory of Alaska, approved May 18, 1916 (45 L. D. 113), including the forms of application and lease, will govern proceedings hereunder so far as applicable, with the following modifications:

1. On request addressed to the Commissioner of the General Land Office at Washington, D. C., a blank application and lease will be furnished the applicant; also those who desire may procure from the superintendent of documents, Government Printing Office, Washington, D. C., a folio containing photolithographic copies of the approved plats of the topographic and subdivisional township surveys of the field for \$1.

2. Applications for coal-mining leases of the lands will be received at the General Land Office from duly qualified applicants up to and including March 1, 1918; and publication of these applications will commence March 4, 1918, and continue for a period of 30 days, under paragraph 7 of the regulations, amended December 3, 1917, to read as follows:

7. When the time for filing such applications shall have expired all applications then on file will be promptly listed and

the proposed terms thereunder will be noted. Thereafter due publication at the expense of the Government for not less than once a week for a period of 30 days will follow in at least two newspapers of general circulation, one of which shall be published in the Territory of Alaska and one in the United States proper, of the applications filed, each to be designated by a number and not by the name of the applicant, the block or blocks applied for, with the announcement that at the expiration of the period of publication the said applications will be taken up and the proposals therein considered, subject to any better terms than may be offered by any other qualified applicant during the period of publication, or by the first applicant.

In the case of the *Alaska Petroleum Coal Co.* 45 L. D. 56 and 65 the old Alaska Coal Acts of 1904 and 1908 are construed.

M. O. R.—55.

CHAPTER 87.

STATUTORY LEGISLATION ON PLACER LOCATIONS.

All forms of placer deposits since the Oil Leasing Act of 1920 may still be located and recorded except those cut out by the leasing Act to wit: oil, gas, oil shale, coal, phosphates and sodium.

The federal requirements are that the location certificate (usually the recorded title) shall contain.

1. The name or names of the locators.
2. The date of the location, and
3. Such a description by reference to natural object or permanent monument as will identify the claim. R. S. Sec. 2324, Comp. L. Sec. 4620.

The statutory details of location in Alaska and the several Mining States, are as follows:

ALASKA.

The location of a placer claim in Alaska is governed by the Act of Congress of August 1, 1912, 37 Stat. L. 242 (Comp. L. sec. 5054-5058) and the territorial Act of 1915 secs. 129A-129R. There are several limitations on Alaska locations not known elsewhere. An association location is limited to 40 acres. Comp. L. sec. 5054. A power of attorney to locate must be acknowledged and recorded. Sec. 5055. Only two locations can be made in one calendar month. Sec. 5056. The length must not exceed three times the width. Sec. 5057. Locations in violation of the Act are void. Sec. 5058.

Location Notice.

Any person qualified under the laws of the United States, who discovers upon the public domain within the Territory of Alaska, a placer deposit of gold, or other mineral which is sub-

ject to entry and patent under the mining laws of the United States, may locate a mining claim thereon in the following manner, to wit:

First—He shall post, or write upon the initial post, stake or monument on the claim, a notice of location containing:

- a. The name or number of the claim.
- b. The name of the locator or locators.
- c. The date of discovery and of posting notice on the claim.
- d. The number of feet in length and width of the claim.

This notice shall be known as the location notice.

Staking.

Second.—He shall distinctly mark the location on the ground so that its boundaries can be readily traced, by placing at each corner or angle thereof substantial stakes, or posts, not less than three feet high above the ground and three inches in diameter, hewed on four sides; or by placing at each corner or angle thereof mounds of earth or rock not less than three feet high and three feet in diameter and the stakes, posts or monuments so used must be marked with the name or number of the claim and the designation, by number, of the corner or angle. The initial stake or monument shall be one of the corner stakes, posts or monuments of the claim located.

Blazing Line Stakes.

If the claim is located on ground that is covered wholly or in part with brush or trees, such brush or trees shall be cut or blazed along the lines of such claim, so as to be readily traced.

If located in an open country, the boundary lines shall be located by placing line stakes or line monuments so as to be readily traced from corner to corner of said claim.—Sec. 1, Act of April 20, 1915.

Location Certificate. Record.

SEC. 2.—Within ninety days after the discovery and posting of the notice aforesaid, the locator shall record with the recorder

of the district wherein such claim is situated, a certificate of location. Such certificate shall contain:

- a. The name or number of the claim.
- b. The name of the locator or locators.
- c. The date of discovery and of posting of the location notice.
- d. The number of feet in length and width of claim.
- e. It shall set forth the description with reference to some natural object, permanent monument, or well known mining claim together with a description of the boundaries thereof so far as applied to the numbering of stakes or monuments.

A failure to record a certificate of location of claim as herein provided shall operate as and be deemed abandonment thereof, and the ground so located shall be open to relocation; *Provided*, That if a full compliance with the preceding provisions of this act shall have been made before any location by another, such compliance shall operate to prevent the abandonment or forfeiture of such claim and save the rights of the original locator.

Sec. 2. *Id.*

ARIZONA.

1. Post notice containing name of the claim, name of locator, date of location and number of acres claimed, and description, with reference to natural object or permanent monument.

2. Mark boundaries with post or monument of stones at each angle of claim. Post must be four inches (square) by four and a half feet long set one foot in the ground and surrounded by a mound of stone or earth. "When a mound of stone is used it must be at least three feet in height and four feet in diameter at the base."

3. Within sixty days after date of location, record with county recorder a copy of the location notice. Rev. Stats. 1913, Sec. 4030.

CALIFORNIA.

1. Post upon a tree, rock in place, stone, post or monument a notice of location containing the name of the claim, name of locator or locators, date of location, number of feet or acreage

claimed, such a description of the claim by reference to some natural object or permanent monument as will identify the claim located, and by marking the boundaries so that they may be readily traced; *Provided*, That where the United States survey has been extended over the land embraced in the location, the claim may be taken by legal subdivisions and no other references than those of said survey shall be required and the boundaries of a claim so located and described need not be staked or monumented. The description by legal subdivisions shall be deemed the equivalent of marking.

2. Within thirty days after posting record a true copy of the notice in the office of the county recorder. Act of March 13, 1909. Civil Code secs. 1426c, 1426d.

COLORADO.

The discoverer of a placer claim shall, within thirty days from the date of discovery, record his claim in the office of the recorder of the county in which said claim is situated, by a location certificate, which shall contain:

First—The name of the claim, designating it as a placer claim;

Second—The name of the locator;

Third—The date of location;

Fourth—The number of acres or feet claimed; and,

Fifth—A description of the claim, by such reference to natural objects or permanent monuments as shall identify the claim.

Before filing such location certificate the discoverer shall locate his claim:

First—By posting upon such claim a plain sign or notice, containing the name of the claim, the name of the locator, the date of discovery, and the number of acres or feet claimed;

Second—By marking the surface boundaries with substantial posts, and sunk into the ground, to wit: one at each angle of the claim. R. S. sec. 4205, March 12, 1879.

IDAHO.

1. Placer claims, as mentioned in section 2329 of the revised

Statutes of the United States, may be located for the purpose of mining deposits and precious stones after the discovery of such deposits. Rev. Code Sec. 3221.

Details of Location.

2. The locator of any placer mining claim located for the purpose of mining placer deposits or precious stones must, at the time of making the location, place a substantial post or monument as is required in the location of quartz claims at each corner of the location, and must also post on one of the same a notice of location containing the date of the location, the name of the locator, the name and dimensions of the claim, the mining district (if any) and county in which the same is situated; and must also give the distance and direction from said post or monument to such natural object or permanent monument, if any such there be, as will fix and describe in the notice itself the location of the claim.

Within fifteen days after making the location, the locator must make an excavation upon the claim of not less than one hundred cubic feet, for the purpose of prospecting the same.

Within thirty days after the location, the locator must file for record in the office of the recorder of the county, or of the deputy recorder of the mining district in which the claim is situated, a substantial copy of his notice of location, to which must be attached an affidavit such as is required in case of quartz claims. Rev. Code, sec. 3222.

Affidavit.

Sec. 1. At or before the time of presenting a location notice for record, whether it be for a quartz or placer claim, one of the locators named in the same must make and subscribe an affidavit in writing on or attached to the notice, substantially as follows, to wit:

STATE OF IDAHO, }
COUNTY OF.....} ss.

I,, do solemnly swear that I am a citizen of the

United States of America (or have declared my intentions to become such), and that I am acquainted with the mining ground described in this notice of location, and herewith called ledge, lode or claim; that the ground and claim therein described, or any part thereof, has not, to the best of my knowledge and belief been located according to the laws of the United States and of this State, or if so located, that the same has been abandoned or forfeited by reason of the failure of such former locators to comply in respect thereto with the requirements of said laws.

(Signature)

Subscribed and sworn to before me this day of A. D. 19.....

(Signature)

Rev. Code sec. 3216.

MONTANA.

1. Post notice at point of discovery, containing name of the claim, name of locator, date of location and number of acres or superficial feet claimed.

2. Within sixty days after posting such notice sink a shaft upon the deposit at or near the point of discovery to be known as the discovery shaft. It must be 10 feet vertical or deeper if necessary to discover the deposit. The cubical contents of the shaft must be not less than 150 cubic feet. If the deposit discovered by the shaft is less than 10 feet, any deficiency in depth may be compensated by other excavation to the 150 cubical feet, but at least 75 cubical feet must appear at the point of discovery.

3. Within thirty days after posting, place monument at each corner or angle, to wit:

a. A tree at least eight inches in diameter blazed on four sides.

b. A post at least four inches square by four and one-half feet long, set one foot in the ground, unless solid rock occur at less depths, surrounded, in all cases, by mound of earth or stone, at least four feet in diameter by two feet high. A squared stump of same size and so mounded is the equivalent of a post.

c. A stone at least six inches square by eighteen inches in length, set two-thirds of its length in the ground with a mound

of earth or stone alongside at least four feet in diameter by two feet in height, or

d. A boulder at least three feet above the natural surface of the ground on the upper side.

The above classes of monuments (a-d) are enumerated as *prima facie* sufficient, but if others are used it shall be a jury question whether they sufficiently mark the location so that "its boundaries can be readily traced."

Each monument must be marked with name of claim and designation of the corner either by number or cardinal point.

4. Within sixty days after posting, record with county clerk certificate of location containing.

a. The name of the claim.

b. The name of the locator.

c. The date of location and such description of the claim with reference to some natural object or permanent monument as will identify the claim.

d. The dimensions or area of the claim and the location thereon the discovery shaft, lode or tunnel.

The word "on" in the last paragraph was probably intended to read "of" and should mean that the position of the discovery point should be identified.

VERIFICATION.

STATE OF MONTANA, }
COUNTY OF SILVER BOW } ss.

Before me, the subscriber, a notary public in and for said county, personally appeared Armour C. Anderson to me personally known, who, being duly sworn, saith that he is a citizen of the United States and discoverer and locator of the Maid of Eckley Placer Mining Claim described in the within certificate of location subscribed by him; that the claim is staked and located on the ground as in said certificate described, and that the location notice was posted at the point of discovery; and that the said certificate and all statements therein made are correct and true.

(Jurat)

Armour C. Anderson.

NEVADA.

1. Post upon a tree, rock in place, stone, post or monument, a notice of location containing the name of the claim, name of locator, date of location, and number of feet or acres claimed.

2. Mark surface boundaries and the location point in the same manner and by same means required for lode claims. On surveyed land when taken by legal subdivision only the location point need be marked.

3. Within ninety days after posting the notice of location, perform not less than \$20 worth of labor upon the claim for the development thereof and record with District and County Recorder a certificate which shall state the name of the claim, designating it as a placer claim; name of the locator; date of location; number of feet or acres claimed and description of the claim with regard to some natural object or permanent monument so as to identify the claim and the kind and amount of location work done and the place on the claim where said work was done.

The marking of the surface boundaries and location point the same as "required for lode claims" requires a reference to section 2423 of the Revised Laws of 1912. The section is uselessly minute and complicated. We print the whole section because it cannot be intelligibly shortened.

"The locator of the lode mining claim must sink a discovery shaft upon the claim located four feet by six feet to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper, if necessary to show by such work a lode deposit of mineral in place; a cut or cross-cut or tunnel which cuts the lode at a depth of ten feet or an open cut along the said ledge or lode, equivalent in size to a shaft four feet by six feet by ten feet deep, is equivalent to a discovery shaft. The locator must define the boundaries of his claim by removing the top of a tree (having a diameter of not less than four inches) not less than three feet above the ground, and blazing and marking the same, or by a rock in place, capping such rock with smaller stones, such rock and stones to have a height of not less than three feet, or by setting a post or stone, one at each corner and one at the center of each side-line. When a post is used, it must

be at least four inches in diameter by four and one-half feet in length set one foot in the ground. When it is practically impossible, on account of bedrock or precipitous ground, to sink such posts, they may be placed in a mound of earth or stones, or where the proper placing of such posts or other monuments is impracticable or dangerous to life or limb, it shall be lawful to place such posts or monuments at the nearest point properly marked to designate its right place. When a stone is used (not a rock in place) it must be not less than six inches in diameter and eighteen inches in length set two-thirds of its length in the top of a mound of earth or stone, four feet in diameter and two and one-half feet in height. All trees, posts or rocks used as monuments, when not four feet in diameter at the base, shall be surrounded by a mound of earth or stone four feet in diameter by two feet in height, which trees, posts, stones or rock monuments must be so marked as to designate the corners of the claim located; provided, however, that the locator of a mining claim shall within twenty days from the date of posting the notice of location, define the boundaries of said claim by placing at each corner and at the center of each sideline one of the hereinbefore described monuments, and shall within ninety days of the date of posting said location notice perform the location work hereinbefore prescribed." Rev. Laws, 1912, sec. 2423.

Several decisions have attempted to construe these Nevada Location Statutes, relieving to some extent locators who have failed to comply with their intricate requirements. *Zerres v. Vanina*, 134 Fed. 610; *Ford v. Campbell*, 29 Nev. 578, 92 Pac. 206; *Indiana Co. v. Gold Hills Co.* 35 Nev. 158, 126 Pac. 965; *Wailes v. Davies*, 158 Fed. 667.

NEW MEXICO.

(Act of March 17, 1909)

The locator at the time of making any location of any placer mining claim shall cause a notice of such location to be placed at a designated corner of the claim stating the name of the claim, the purpose and the kind of material for which such claim is located, and the name of the locator. If on surveyed land such

notice shall contain a description by its legal subdivisions; on unsurveyed lands, a description by metes and bounds with reference to some known object or monument.

Each corner, whether on surveyed or unsurveyed lands shall be marked by a wooden post at least four feet high, securely set in the ground or by a substantial stone monument.

A duplicate of such location notice shall be filed and recorded in the office of the Probate Clerk within ninety days after notice posted.

There must be a previous discovery except that oil and gas claimants shall have to the end of the calendar year to make discovery and their possession in the meantime is to be protected.

WASHINGTON.

Location Notice. Staking.

The discoverer of placers or other forms of deposits subject to location and appropriation under mining laws applicable to placers shall locate his claim in the following manner:

First—He must immediately post in a conspicuous place at the point of discovery thereon, a notice or certificate of location thereof, containing (a) the name of the claim; (b) the name of the locator or locators; (c) the date of discovery and posting of the notice hereinbefore provided for, which shall be considered as the date of the location; (d) a description of the claim by reference to legal subdivision of sections, if the location is made in conformity with the public surveys; otherwise, a description with reference to some natural object or permanent monuments as will identify the claim; and where such claim is located by legal subdivisions of the public surveys, such location shall, notwithstanding that fact, be marked by the locator upon the ground the same as other locations.

Record. Monuments.

Second—Within thirty days from the date of such discovery he must record such notice or certificate of location in the office of the auditor of the county in which such discovery is made,

and so distinctly mark his location on the ground that its boundaries may be readily traced.

Discovery Work. Oil and Gas Excepted.

Third—Within sixty days from the date of discovery the discoverer shall perform labor upon such location or claim in developing the same to an amount which shall be equivalent in the aggregate to at least ten dollars' worth of such labor for each twenty acres or fractional part thereof contained in such location or claim; *Provided*, however, that nothing in this subdivision shall be held to apply to lands located under the laws of the United States as placer claims for the purpose of the development of petroleum and natural gas and other natural oil products.

Affidavit of Performance.

Fourth—Such locator shall upon the performance of such labor, file with the auditor of the county an affidavit showing such performance and generally the nature and kind of work so done. Rem. & Bal. Code sec. 7367.

WYOMING.

Location Certificate.

Hereafter the discoverer of any placer claim shall, within ninety days after the date of discovery, cause such claim to be recorded in the office of the county clerk and exofficio register of deeds of the county within which such claim may exist, by filing therein a location certificate, which shall contain the following:

First—The name of the claim, designating it as a placer claim.

Second—The name or names of the locator or locators thereof.

Third.—The date of location.

Fourth—The number of feet or acres thus claimed

Fifth—A description of the claim by such designation of

natural or fixed objects as shall identify the claim beyond question.

Location Notice and Staking.

Before filing such location certificate, the discoverer shall locate his claim: First—by securely fixing upon such claim a notice in plain, painted, printed, or written letters containing the name of the claim, the name of the locator or locators, the date of the discovery, and the number of feet or acres claimed.

Second—By designating the surface boundaries by substantial posts or stone monuments at each corner of the claim. Comp. St. sec. 3474.

There seem to be no specific statutes regulating the location of placer claims in Oklahoma, Oregon, North or South Dakota.

If there are district rules (which would be very rare) they would control. A claim, located by notice and location certificate complying with the federal requirements above stated, would make a sufficient possessory title.

The instructions printed in *Walton v. Wild Goose Co.* 123 Fed. 209, 60 C. C. A. 155, 22 M. R. 688, set forth what makes a valid placer location in the absence of statutory regulations.

CHAPTER 88.

APPLICATION FOR PLACER PATENT.

Where a valid claim existed prior to the date of the passage of the Oil Act, February 25, 1920, and has been maintained in compliance with the laws under which such claim was initiated or originally located, a patent may be secured for it under the laws in force at the time of the location. See page 866.

The following forms are intended to apply to an application for patent for a placer claim upon surveyed lands. The procedure for application upon unsurveyed lands is given in full in the 15th edition of the Mining Rights.

Government Subdivisions.

When the application is for one or more exact quarter sections or government subdivisions the application does not go through the office of the Surveyor General as in case of lode claims, or placers not upon surveyed lands, but the application must be made in the local Land Office without any proceedings whatever in the Surveyor General's office.

First Set of Papers.

The first paper to be used is the Notice of Application for U. S. Patent, of which four copies should be made, one for posting on the placer claim, one to be attached to the proof of posting, one for publication in a local newspaper and one for posting in the Land Office.

A. NOTICE OF APPLICATION FOR U. S. PATENT

U. S. Land Office, Glenwood Springs, Colo.

October 20, 1920.

Notice is hereby given that in pursuance of an Act of Congress

approved May 10, 1872 and the amendments thereto, J. C. Hardison, whose Post Office address is De Beque, Colorado, has made application for patent for the Monarch Placer Mining Claim bearing oil shale, and situate in Mt. Logan Mining District, County of Garfield, State of Colorado, and described as follows to-wit: The Southeast Quarter of section 24, Township 7 South, Range 98, West of the 6th. Principal Meridian.

Names of adjoining claims unknown.

Date of posting this notice on claim October 20, 1920.

J. C. Hardison.

Witnesses.

J. C. Carter.

A. B. Harvey.

One of the above notices should be at once posted on the placer claim in some conspicuous place in the presence of two persons, who attach their signatures to the notice posted.

The second paper to be prepared is;

B. PROOF OF POSTING NOTICE ON CLAIM

STATE OF COLORADO, }
COUNTY OF GARFIELD. } ss.

J. C. Carter and A. B. Harvey, each for himself and not one for the other, deposes and says that he is a citizen of the United States over the age of twenty-one years and was present on the 20th day of October, 1920 when a notice of the intention of J. C. Hardison to apply for a patent from the United States for the Monarch Placer Mining Claim was posted in a conspicuous place upon said mining claim to-wit: on a post at the discovery cut on said mining claim where the same could be easily seen and examined. A copy of the notice so posted upon said claim is herewith attached and made a part of this affidavit.

J. C. Carter.

A. B. Harvey.

Subscribed and sworn to before me this 22d. day of October, 1920 and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit

and the attached notice were read by each of them before their signatures were affixed thereto, and the oath made by them.

My commission expires April 17, 1921.

(Seal).

George Edinger.

Notary Public.

To this form B, Proof of Posting Notice on the Claim, should be attached an exact copy of form A, the Notice of Application for U. S. Patent.

Conspicuous Posting.

Care should be taken to post the notice in a conspicuous place. Attempts to post the notice but at the same time to fail to give it publicity, such as inclosing it in an oilcloth envelope to protect it from the weather, or placing it in a box on the ground among large boulders has been held by the department to be a posting, not in a conspicuous place.

Third and Fourth Copy of Notice—Exactness.

The third copy of Notice B should be an exact copy of the notice that is posted except that it is not signed by the witnesses. This third copy is to be posted on the Land Office Bulletin and remains there during the sixty days' period of publication and posting on the claim.

The fourth copy of notice B should also be an exact copy of the notice posted except that it is not signed by the applicant nor by the witnesses, but, when sent to the Land Office, is signed by the Register, the application number given to it and it is returned to the claimant or his attorney or forwarded by the Register direct to the printer for publication in the newspaper.

The next paper to be prepared is the

C. APPLICATION FOR PATENT

STATE OF COLORADO,)
COUNTY OF GARFIELD.) ss.

Application for Patent for the Monarch Placer Mining Claim.

To the Register and Receiver of the U. S. Land Office at Glenwood Springs, Colorado;

J. C. Hardison, whose Post Office address is De Beque, Colorado, being duly sworn according to law deposes and says that in virtue of and in compliance with the mining rules, regulations and customs, by himself and his grantors, he, the applicant for patent herein, has become the owner and is in the actual, quiet and undisturbed possession of the Monarch Placer Mining Claim situate in Mt. Logan Mining District, County of Garfield and State of Colorado, and being more particularly described as the Southeast Quarter of section 24, Township 7 South, Range 98, West of the 6th Principal Meridian, and that a notice of said application is now posted conspicuously upon said claim and a copy of the same is herewith filed.

Deponent further says that the facts relative to his right of possession to said mining claim, are substantially as follows, to-wit:

That said claim was located on the 20th day of October, 1915 by James A. Allen, who located the same as a placer mining claim in full compliance with all local rules and regulations, the laws of the State of Colorado and of the United States relating to mining claims.

That said discoverer and locator conveyed all his interest in said claim to this applicant, who thereupon took possession and is the sole present owner, which will more fully appear by reference to the copy of the original record of location and the abstract of title herewith filed.

That the value of the labor done and improvements made upon or for the benefit of said claim by this applicant and his grantor exceeds the sum of \$500; that said improvements consist of an excavation at the foot of the escarpment in which the strata of oil shale deposits are exposed; that said excavation is 10 feet wide by 30 feet long and at the breast of the same a lateral, 7 feet high by 5 feet wide in the clear, is run in an easterly direction a distance of 40 feet and another lateral, of the same dimensions, in a westerly direction a distance of 60 feet; that the center of said excavation bears South 40° East 500 feet from the Southeast corner of said section 24.

That the land applied for is placer ground containing deposits of oil shale not in vein or lode formation; that title is sought not to control water courses or to obtain valuable timber but in

good faith because of the mineral therein; that deposits of oil shale in stratum formation exist upon practically all parts of said claim and that tests from the oil shale upon said claim have produced 60 gallons of oil to the ton of oil shale.

The soil is a black loam varied in depth except where the oil shale is exposed at different points on the surface and upon the face of the escarpment which extends throughout the claim, running in an easterly and westerly direction.

There are no streams or springs upon the land and the timber consists of a scattering growth of small pine and scrub oak.

The claim is located about three miles in a westerly direction from the town of De Beque in said state.

There are no salt licks, salt springs or mines, other than the claimant's workings, nor mill sites upon this claim.

In consideration of which facts and in conformity with the provisions of chapter 6 of Title 32 of the Revised Statutes of the United States and the amendments thereto, application is hereby made for and in behalf of said J. C. Hardison for a patent from the United States for the said Monarch Placer Mining Claim.

J. C. Hardison.

Subscribed and sworn to before me this 22nd day of October, A. D. 1920 and I hereby certify that the foregoing affidavit was read and examined by said J. C. Hardison before his signature was affixed thereto and the oath made by him.

My Commission expires April 17, 1921.

George Edinger.
Notary Public.

What Application Must Show.

The location being upon surveyed lands, the descriptive report required to be made by the surveyor in cases of official survey of the claims, is dispensed with, and in lieu thereof the statements of the claimant must supply the requirements of the surveyor's report, and should show in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest

corner of the public surveys. Rule 60. The detailed requirements are shown in the foregoing form and should be carefully followed.

The next paper to be prepared is D the corroborating affidavit of two disinterested witnesses as to the statements made in the application concerning the location and value of the improvements.

D. CORROBORATING AFFIDAVIT

STATE OF COLORADO, } ss.
COUNTY OF GARFIELD. }

J. C. Carter and A. B. Harvey, each for himself and not one for the other being first duly sworn, deposes and says; that he is a citizen of the United States over the age of twenty-one years; that he is well acquainted with the Monarch Placer Mining Claim situate in Mt. Logan Mining District, County of Garfield, State of Colorado, claimed by J. C. Hardison and described in his application for U. S. Patent therefor; that he has examined the work that has been done upon said placer claim and that the statements made in said application for patent as to such work and improvements is true; that the value of said work exceeds the sum of \$500.

That he has read said application for patent as signed by said applicant and knows the contents thereof and that the matters and things stated in said application are true of his own knowledge.

J. C. Carter.
A. B. Harvey.

Subscribed and sworn to before me this 22nd day of October, A. D. 1920 and I hereby certify that the foregoing affidavit was read to the above named J. C. Carter and A. B. Harvey prior to their names being subscribed thereto and that deponents are reputable citizens to whom full faith and credit should be given.

My Commission expires April 17, 1921.

George Edinger.
Notary Public.

The foregoing corroborating affidavit is required by the Regulations of the Land Office controlling the proceedings on application for patent, particularly when the claim is on surveyed land, because in such cases the showing otherwise made in an official survey is absent.

The next paper to be prepared is

E. PROOF OF CITIZENSHIP

STATE OF COLORADO, }
COUNTY OF GARFIELD. } ss.

J. C. Hardison being first duly sworn according to law deposes and says; that he is the applicant for patent for the Monarch Placer Mining Claim situate in Mt. Logan Mining District, County of Garfield, State of Colorado; that he is a native born citizen of the United States, born in the County of, State of, and is now a resident of De Beque, State of Colorado.

J. C. Hardison.

Subscribed and sworn to before me this 22nd day of October, A. D. 1920.

My Commission expires April 17, 1921.

George Edinger.
Notary Public.

Naturalized Citizen. Corporation.

Where the applicant is not a native born citizen, the proof should show when, where and in what Court he took out his first papers; if the applicant is a corporation the proof is made by a certified copy of the Charter or Articles of Incorporation.

Newspaper Designated.

While the foregoing papers are being prepared the applicant should request the Register of the local Land Office to designate the newspaper in which the fourth copy of A. is to be published, and when designated, the applicant should secure from such paper the

F. PUBLISHER'S CONTRACT

I, the undersigned, proprietor and publisher of the Oil Shale News, a weekly newspaper published at De Beque, Mesa County, State of Colorado, hereby agree to publish a notice dated U. S. Land Office, Glenwood Springs, Colorado, October 20, 1920 required by Act of Congress approved May 10, 1872, of the intention of J. C. Hardison to apply for a patent for his claim on the Monarch Placer Mining Claim situate in Mt. Logan Mining District, County of Garfield, State aforesaid, and to hold said J. C. Hardison alone responsible for the amount of our bill for publishing the same.

And it is hereby expressly stipulated and agreed that no claim shall be made against the government of the United States, or its officers or agents, for such publication.

WITNESS my hand and seal this 22nd day of October, A. D. 1920.

A. B. Bush.
Publisher.

The newspaper designated by the Register must be a paper published nearest the claim; if two papers are published in the nearest town, either may be designated and it is the practice of the Register in such cases to designate that one which the claimant may suggest.

Abstract of Title.

Pending the preparation of the papers A to F the claimant should cause to be prepared an Abstract of Title by the Clerk and Recorder of the County in which the claim is located. The Department requires that the application shall be accompanied by a certified copy of the location notice, and such copy should be included in the Abstract, the Recorder's Certificate to the Abstract showing that it contains a true copy of the location certificate.

The Abstract must show title in the applicant on the date that the application is filed in the local Land Office. As it is frequently impracticable to secure the Abstract certified upon the

same date as the application is made it is advisable to file the First Set of papers when ready and the Land Office will hold the application suspended until the Abstract is filed. Or the applicant may file his Abstract with the application and thereafter furnish a supplementary Abstract certified to and including the date of filing. However, publication will not be ordered until the proper Abstract is filed. Upon filing the Abstract, or when publication is ordered, the Register will either deliver to the applicant or send direct to the newspaper the copy of A signed by the Register which must be published sixty-one days in a daily, or nine consecutive times in a weekly paper; and while such notice is being published, a copy also stands posted on the claim and one copy is posted on the bulletin at the Land Office.

Methods of Notice Mandatory.

Each of these methods of giving notice is mandatory and essential and care should be taken by the applicant that the copy posted on the claim should remain so posted during the entire period of publication.

Lode Claims within Placers.

In all placer applications it must be shown whether or not there are any known veins or lodes included within the placer, and if there are, such fact must be stated in the application and notices whether owned by the applicant or others. Where there is no known vein or lode that fact must appear by the affidavit of two or more witnesses (rule 26) and the affidavit must be filed in the Land Office with the first set of papers.

G. PROOF THAT NO KNOWN VEIN OR LODE EXISTS IN PLACER

STATE OF COLORADO, }
COUNTY OF GARFIELD. } ss.

C. O. Post and Daniel E. Fisher, each of lawful age and resident in De Beque, County of Mesa, said State being first duly sworn, each for himself and not one for the other, saith, that he is a citizen of the United States; that he is well acquainted with the Monarch Placer Mining Claim, situate in Mt. Logan

Mining District, County of Garfield, State of Colorado, claimed by J. C. Hardison, applicant for United States Patent therefor; that for many years he has resided near to and is well acquainted with the character of said land, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly in regard thereto, and that there is not, to his knowledge, within the limits thereof, any known vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin or copper upon said claim or any part thereof, and further that he has no interest whatever in the said placer claim.

C. O. Post.

Daniel E. Fisher.

Subscribed and sworn to before me this 22nd day of October, A. D. 1920, and I hereby certify that the foregoing affidavit was read to the above named C. O. Post and Daniel E. Fisher previous to their names being subscribed thereto, and that deponents are reputable persons to whom full faith and credit should be given.

My Commission expires April 17, 1921.

(Seal)

George Edinger.

Notary Public.

The above set of papers from A to G constitute what is called the first set of application papers.

Second Set or Final Entry Papers.

If no Adverse Claim is filed in the Land Office by a hostile interest on or before the sixtieth day after the date of the first newspaper publication, the applicant may then proceed with what is called the Second Set or Final Entry papers, which consist of H, Proof that Notice remained posted on Claim during publication period, I, Certificate of Publication, J, Proof of sums paid and K, Application to purchase, and after the notice has run for its full length of time in the newspaper there should be prepared

H. PROOF THAT NOTICE REMAINED POSTED ON CLAIM DURING TIME
OF PUBLICATION

STATE OF COLORADO,)
COUNTY OF GARFIELD.) ss.

J. C. Hardison being first duly sworn according to law deposes and says that he is the claimant of the Monarch Placer Mining Claim situate in Mt. Logan Mining District, Garfield County, State of Colorado, upon which notice of his intention to apply for a patent therefor was posted on the 20th day of October, A. D. 1920 as fully set forth and described in the affidavit of J. C. Carter and A. B. Harvey dated the 22nd day of October, A. D. 1920, which affidavit was duly filed in the office of the Register at Glenwood Springs in said State; and that said notice so mentioned and described remained continuously and conspicuously posted upon said mining claim from the 20th day of October, A. D. 1920 until and including the 27th day of December 1920, including the sixty days' period during which notice of said application for patent was published in the newspaper.

J. C. Hardison.

Subscribed and sworn to before me this 27th day of December, A. D. 1920 and I hereby certify that the foregoing affidavit was read to the said J. C. Hardison previous to his name being subscribed thereto.

My Commission expires April 17, 1921.

George Edinger.
Notary Public.

Affidavit on Information.

The Department has ruled that this affidavit of continuous posting may be made by the claimant from information derived from hearsay. 9 L. D. 503.

Destruction of Posted Notice.

If the posted notice has been destroyed pending publication the Department requires a new posting and a new publication.

37 L. D. 365; *Batterton v. Douglas Company*, 20 Ida. 763, 120 Pac. 827, 38 L.R.A.(N.S.) 1121.

The next paper of the second set is

I. CERTIFICATE OF PUBLICATION

I, A. B. Bush, do hereby certify that I am publisher of the Oil Shale News, a weekly newspaper published at De Beque, County of Mesa, State of Colorado and that the annexed notice was published in said paper once each and every week for nine consecutive weeks, the first publication being on the 25th day of October, A. D. 1920 and the last publication being on the 27th day of December, A. D. 1920.

A. B. Bush.

Subscribed and sworn to before me this 27th day of December, A. D. 1920.

My Commission expires, April 17, 1921.

George Edinger.

Notary Public.

To the above certificate the publisher attaches a copy of the notice cut from the paper, and generally attaches his receipted bill to the certificate, showing that the bill is paid.

The next paper to be prepared is

J. PROOF OF SUMS PAID

STATE OF COLORADO, }
COUNTY OF GARFIELD. }^{ss.}

J. C. Hardison, having been first duly sworn according to law, deposes and says that he is a citizen of the United States, over the age of twenty-one years; that he is the applicant for patent to the Monarch Placer Mining Claim, in Mt. Logan Mining District, Garfield County, State of Colorado; that in the prosecution of such application he has paid the following sums of money, viz.:

To Register and Receiver for filing application in Land Office,	\$10 00
To the Oil Shale News, for publishing Notice of Application,	24.00
To the Receiver of the local Land Office, for land	400.00
	<hr/>
	\$434.00

J. C. Hardison.

Subscribed and sworn to before me this 28th day of December,
A. D. 1920.

My Commission expires April 17, 1921.

George Edinger.
Notary Public.

These are the official costs only, and other charges incident to the application, such as notary's fees, cost of abstract and attorney's fees are not to be included.

The final paper to be prepared and filed with the second set is,

K. APPLICATION TO PURCHASE

To the Register and Receiver, United States Land Office, at
Glenwood Springs, Colorado;—

The undersigned, claimant under the provisions of the Revised Statutes of the United States, Chapter VI, Title 32, and legislation supplemental thereto, hereby applies to purchase that mining claim known as the Monarch Placer Mining Claim, described as follows to-wit:—The Southeast quarter of Section 24, Township 7 South, Range 98, West of the 6th Principal Meridian, in Mt. Logan Mining District, County of Garfield and State of Colorado, embracing one hundred and sixty acres, and hereby agrees to pay therefor the sum of Four hundred Dollars, being the legal price thereof.

Dated, Glenwood Springs, Colorado, January 2, 1921.

J. C. Hardison.

I _____ Register of the Land Office at Glenwood Springs, Colorado do hereby certify that the aforesaid Mining Claim, as applied for above, is subject to entry by the

above named applicant; the area of said Mining Claim being one hundred and sixty acres, and the legal price thereof Four hundred Dollars.

January 2, 1921.

Register.

The above Application to Purchase is not required to be verified.

When the foregoing final entry papers, H to K, are filed in the land office and the purchase money paid, the Register, if all papers are regular, makes his certificate that the fourth copy of A, Notice of Application, remained posted in his office during the period of publication in the newspaper.

Final Certificate of Entry.

Upon approval of all proceedings in the application the Register issued his Final Certificate of Entry of which he delivers to the claimant a duplicate which should be kept by the claimant until he receives notice from the local land office that patent has arrived at such office, as it is necessary that it should be surrendered to the land office before patent is delivered to the claimant. If the certificate should be lost or mislaid, provision is made in the land office regulations for the filing of an affidavit showing such loss, whereupon, if the affidavit be sufficient, the patent is delivered notwithstanding the non-production of the Certificate.

Affidavits—Where and before What Officers Made.

The Statute, as well as the regulations, requires that all affidavits required to be made by the applicant must be made within the land district.—R. S. Sec. 2335, 34 L. D. 314, 35 L. D. 455, 42 L. D. 526. An exception is the affidavit of citizenship which by Act of April 26, 1882 may be made anywhere in the United States, when the applicant resides outside of the land district.

They may be made before any disinterested officer authorized to administer oaths. But a notary public who has been retained as counsel for any interested party cannot act. 34 L. D. 526.

Non-Resident Owner. Power of Attorney.

It will often happen that an application for patent is to be made by a nonresident owner, and in such case, in order to avoid the necessity of the owner journeying to the land district to make affidavits, which would require at least two trips, he may delegate the power to an agent or attorney-in-fact, which must be by a written power to be filed in the land office with the first set of papers.

POWER OF ATTORNEY TO APPLY FOR PATENT

KNOW ALL MEN BY THESE PRESENTS, That I, Edward D. Allen, of the City of Chicago, State of Illinois, a citizen of the United States, do hereby constitute and appoint George C. Hart, of De Beque, County of Mesa, State of Colorado, my Attorney-in-fact for me and in my name to make application for patent of the United States, in the proper Land Office, upon the Paraffin Placer Mining Claim, situate in Mt. Logan Mining District, County of Garfield, State of Colorado, and being the Northwest quarter of Section 10, Township 6 South, Range 97 West of the 6th Principal Meridian; and to make or cause to be made any and all affidavits and papers which may be required in the prosecution of such application, or to perfect or protect the title thereto, and to do all acts and things in and about the premises which I myself, if present could do, until patent is finally delivered.

Also, in case of adverse claim being filed against said application, I authorize my said attorney-in-fact to employ counsel and take all measures necessary to defend against said adverse claim or suit in support thereof, either in the land office or in judicial proceedings, and in such judicial proceedings to execute any bonds or other papers, and verify all proceedings, to and including appeal or writ of error.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this third day of February A. D. 1921.

Edward D. Allen. (Seal)

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

I, Henry C. Best, a Notary Public in and for said County and State do hereby certify that Edward D. Allen, who is personally known to me to be the same person described in and who executed the within Power of Attorney to Apply for Patent, personally appeared before me this day and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal this third day of February A. D. 1921.

Henry C. Best,
Notary Public.

(SEAL)

Mineral Surveyor Disqualified.

The Land Office regulations (Rule 93) provide that a mineral Surveyor will not be allowed to prepare for the claimant the papers in support of an application for patent or otherwise perform the duties of an attorney before the land office in connection with a mining claim. He should, therefore, not be designated as an agent in the power of attorney.

Application by Corporation.

A corporation may, of course, execute a power of attorney to an agent, but the better procedure is for the company to appoint by resolution, some officer to act for the company, a copy of which resolution should be certified by the Secretary and filed, with the first set of papers, in the Land Office.

CERTIFIED COPY OF RESOLUTION OF THE GRAND VALLEY OIL COMPANY DESIGNATING AGENT TO APPLY FOR PATENT.

I, Clyde W. Turnbull, Secretary of The Grand Valley Oil Company, do hereby certify that at a meeting of the Board of Directors of said Company held at the office of the Company, in

Denver, Colorado, on the 12th day of April, A. D. 1921, at which meeting a majority of the Board of Directors, constituting a quorum, were present, the following resolution was passed and adopted, to-wit:—

“RESOLVED, That John G. Kerr, Vice-President of the Company be and he is hereby designated and appointed as the officer, agent and attorney-in-fact of this company, to make application in its behalf for patent of the United States in the Glenwood Springs, Colorado Land Office for the Paraffin Placer Mining Claim, being the Northwest quarter of Section 10, Township 6 South, Range 97 West of the 6th Principal Meridian, in Mt. Logan Mining District County of Garfield, State of Colorado, and to make and sign all affidavits and other papers required in the prosecution of said application, and to do any and all things necessary to be done in the premises until patent is issued.”

And I further certify that the foregoing is a true and correct copy of said resolution as the same appears upon the minute book of said company, and that the same has not been changed, altered or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Company this 12th day of April A. D. 1921.

Clyde W. Turnbull,
Secretary.

(CORPORATE SEAL)

Adverse Claim.

The Federal Statutes, R. S. Sections 2325 and 2326 provide for the filing of an adverse claim against an application for patent, and the bringing of a suit in a court of competent jurisdiction in support of the adverse.

The adverse claim must be filed during the period of sixty days' publication which has been construed to mean on or before the sixtieth day after the date of the first newspaper publication. 13 L. D. 286. The time for filing the adverse cannot be extended. 29 L. D. 467; nor can it be withdrawn for amendment,

but if any defect in it be discovered before the period for filing has expired, a new adverse curing the defect may be filed.

The adverse is to be filed in the local land office where the application is made, and the form may be as follows:—

ADVERSE CLAIM

UNITED STATES LAND OFFICE at Glenwood Springs, Colorado:

In the matter of the application of J. C. Hardison for a United States Patent to the Monarch Placer Mining Claim, situate in Mt. Logan Mining District, County of Garfield, State of Colorado.

To the REGISTER and RECEIVER of said UNITED STATES LAND OFFICE, and to the above named claimant

WHEREAS J. C. Hardison did, on the 22d day of October, A. D. 1920, file in the District Land Office of the United States at Glenwood Springs, Colorado, his application for a United States Patent for the Monarch Placer Mining Claim, comprising the Southwest Quarter of Section 24, Township 7 South, Range 98 West of the 6 P. M. situate in Mt. Logan Mining District, County of Garfield, State of Colorado, containing one hundred and sixty acres, and the said applicant did, at the same time and place, give notice that he would apply for a United States Patent for the above described Placer Claim and premises in words and figures of the printed notice on margin hereof, to wit: (Here attach copy of newspaper publication).

AND WHEREAS the first publication of said notice of said application appeared in the Oil Shale News, a weekly newspaper published at De Beque, in the County of Mesa, said State, on the 25th day of October, A. D. 1920.

NOW THEREFORE, I, J. W. Kessinger, a citizen of the United States over the age of twenty-one years, residing in and my postoffice address being Denver in the City and County of Denver, in said State, do, on this tenth day of November A. D. 1920, enter this protest and adverse claim against the issuing of a patent to the said J. C. Hardison, for his pretended claim upon the so-called Monarch Placer Mining Claim, as set forth in his said notice and application as aforesaid, for the following reasons, to wit:

1. The surface ground and minerals contained therein as set forth and described in said notice and application, are not the property of the said applicant, neither is he entitled to hold the same under or by virtue of the local laws, rules and customs of miners in said mining district, the laws of the State of Colorado, or the statutes of the United States relating to mining claims.

2. Because the premises described in said notice and application of said applicant, and claimed as the so-called Monarch Placer Mining Claim, is claimed adversely, and is owned by protestant, and is in fact the premises claimed and owned by protestant as the Wilson Placer Mining Claim, as will appear by reference to an Abstract of Title herewith filed, made a part of this protest and marked EXHIBIT A.

3. Because protestant and his grantors have held, occupied and possessed the premises set forth and described by the said applicant in his notice and application of the so-called Monarch Placer Mining Claim, long prior to the pretended discovery and location of the so-called Monarch Placer Mining Claim; such occupation and possession of protestant and his grantors having been under and by virtue of a full compliance with the local laws, rules and customs of said mining district, and the laws of said State and of the United States, pertaining to mineral lands; and this protestant is a bona fide purchaser for a valuable consideration from the original discoverers and locators of said Wilson Placer Mining Claim, as shown on said abstract.

4. Because a valid discovery, location and record of said Wilson Placer Mining Claim, was made by protestant and his grantors, in strict compliance with said local laws, rules and customs, and the laws of the State of Colorado and of the United States, and while the same was vacant mineral land of the United States, open to occupation, long prior to any valid discovery or location thereof by said applicant or his grantors, and said Wilson Placer Mining Claim has been occupied and possessed as aforesaid, ever since its discovery as aforesaid, by protestant and his grantors under and by virtue of such discovery, location and record.

5. That in the pretended location of said Monarch Placer

Mining Claim said applicant did not mark and has not since said pretended location marked the boundaries of said claim by setting a stake at each corner thereof, nor did said applicant set a stake or mark any corner of said Monarch Placer Mining Claim.

THEREFORE protestant enters this his protest and adverse claim against the issuance of a patent to the said applicant for his claim upon the so-called Monarch Placer Mining Claim.

J. W. Kessinger.

STATE OF COLORADO, }
COUNTY OF GARFIELD. } ss.

On this tenth day of November A. D. 1920, before me, the subscriber, a Notary Public in and for said County, personally appeared the above named J. W. Kessinger, who being first duly sworn, saith that he is the adverse claimant named in the foregoing protest and adverse claim above subscribed by him.

That he has read the same and knows the contents thereof; that the same is true in substance and in fact; and that the said adverse claim is made in good faith and to protect the better and prior title of protestant.

J. W. Kessinger.

Sworn and subscribed to before me, this tenth day of November A. D. 1920.

My commission expires April 17, 1921.

George Edinger Notary Public.

Verification.

The adverse claim may be verified by the adversing claimant outside of the land district, or by an agent cognizant of the facts who must make it within the district and furnish proof of his agency. 34 L. D. 314.

Suit in Support of Adverse.

The adverse claimant must, within thirty days after filing the adverse claim commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession.

M. O. R.—57.

Proceedings Suspended.

Upon the filing of the adverse all proceedings in the land office, except the publication of notice and making and filing of affidavit thereof, are suspended until the adverse suit is determined.

The nature of the complaint to be filed and the proceedings thereunder and after suit is determined will be found in Mining Rights, 15th edition.

CHAPTER 89.

EASEMENTS.

Right of way for Pipe Line.

No specific regulations concerning easements or other rights of way have been promulgated but by Rule 30 of the Oil Circular (P. 363) the Secretary directs that the rules contained in the circular of June 6, 1908, printed in 36 L. D. 567, should govern as far as applicable. The adoption of old rules is proper compliance with the requirements of section 28 in that respect.

These rules of 1908 were made to carry out several right of way Acts, to-wit:

The act of March 3, 1891 amended March 4, 1917 now printed as sections 4934-4937 of the Compiled Laws of 1918 granting rights of way to canals, ditches and reservoirs.

The Act of May 11, 1898 extending the above recited act to power and irrigation purposes. Comp. L. section 4938.

The Reservoir Act of Feb. 26, 1897. Comp. L. section 4699.

The Oil Pipe Line Act, Limited to Colorado and Wyoming, May 21, 1896. Comp. L. sections 4949-4952.

The Act of January 13, 1897 concerning reservoirs for live stock. Comp. L. sections 4939-4942.

The Act of Feb. 15, 1901, Comp. L. section 4946, granting rights of way for numerous purposes especially telegraphs and telephones over public lands, National Forests and National Parks.

The Act of Jan. 21, 1895 amended May 11, 1898. Comp. L. section 4943, granting rights of way for mining, lumbering, canals and reservoirs.

The Act of Feb. 1, 1905, Comp. L. Section 823, conferring partial jurisdiction over National Forests on the Department of Agriculture.

The Act of Feb. 1, 1905 Comp. L. section 4947, a general right of way Act.

The said circular covers not only Pipe lines but reservoirs, ditch lines, telegraphs, telephones and electrical plants under the many Acts of Congress above cited, which Acts along with the regulations contain many restrictions as to timber and other conditions when Forest Reserves are crossed.

Under these rules, a survey must be made, the forms of proof of such survey being set out at length as an Appendix to the rules. 47 L. D. 587.

To what extent the special Acts referred to in the circular are repealed or modified by the 1920 Act, it is impossible to state without a lengthy review of the history of each Act, but the expression contained in the proviso to section 28, that no right of way shall "be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations and conditions of this section," would seem to imply a repeal: In any event their many provisions inconsistent with the Leasing Act are abrogated.

This circular of 1908 gives no form for an application for a pipe line right of way but, attempting to segregate pipe lines from the other easements so as to draft a form of application, it would seem that the petition should be addressed to the Commissioner of the General Land Office, be filed in the local office, contain the usual preliminary averments as to citizenship and be accompanied by a map and verified.

Line Crossing Forest Reserve.

If the line crosses a National Forest, bond to protect the timber must be given (Rule 5e) which bond cannot be fixed until the application has been submitted to the General Land Office and furthermore, the Petitioner must file a stipulation under seal, containing covenants to furnish assistance to the Rangers in fighting fires and many other provisions set out at length in Rule 6.

It is very doubtful whether such stipulation could be legally demanded under the grant of the right of way contained in the 1920 Act specially permitting such right of way over National

Forests, unless the Court, should take the extreme view that the discretion allowed in the Act to the Department has practically no limits.

Rule 39 requires an application to the Department of Agriculture for permission to cross the Reserve but this rule cannot possibly be enforced to defeat the express grant of Right of way mentioned in Section 28.

Maps of Line.

The circular above cited contains minute directions as to the maps and details which the field notes must show which direction can be followed only after close study of its provisions.

The rules in this circular, promulgated in 1908 to cover a series of Acts are, most of them, totally unsuited to applications under the 1920 Act but we have endeavored to segregate such requirements as can be made to apply to the present law, in the form below printed.

FORM OF PETITION FOR PIPE LINE RIGHT OF WAY.

To the Honorable Commissioner of the General Land Office.

Your petitioner, The Strike Breakers' Pipe Line Company respectfully represents.

1. That it is a corporation organized under the laws of the State of Colorado. A copy of its Articles of Incorporation duly certified is herewith filed, marked Exhibit A. Also a certified copy of the general corporation laws of the said State marked Exhibit B. And a list of its officers marked Exhibit C and a list of the stockholders with their names and residences, marked Exhibit D are hereto attached.

2. The Post Office address of the petitioning company is 450 Equitable Building, Denver, Colorado.

3. That your petitioner applies for a right of way through the Public lands for the transportation of oil under the terms of the Act entitled, "An Act to promote the Mining of Coal, Phosphate. Oil, Oil Shale, Gas and Sodium on the Public Domain," approved Feb. 25, 1920.

4. That your petitioner intends to operate as a common carrier and to carry government oil and to comply in all respects with the conditions of said Act.

5. That the line of said survey is as follows: commencing at the Northeast corner of the Townsite of Florence, in the County of Fremont, State of Colorado, and running thence (give course and distances according to the field notes), and terminates at the reduction works of the Carnegie Reduction Company located as described in said field notes.

6. A map showing the course and distance of said pipe line with the field notes of the same is herewith filed marked Exhibit E.

WHEREFORE your petitioner prays that it be granted a right of way of the width of 50 feet according to the survey shown by the map hereto attached under such limitations as are required by said Act and the regulations of the Department and it hereby accepts and agrees to conform to such regulations and all the conditions of said recited Act.

Dated at Denver, Colo. August 5, 1920.

The Strike Breakers' Pipe Line Company

By Herbert F. Savage,

President.

Attest: Charles S. Harris,

[Corporate Seal.]

STATE OF COLORADO,
CITY AND COUNTY OF DENVER. } ss.

Before me the subscriber, a Notary Public in and for said City and County personally came Charles H. Harris who being first duly sworn deposes and says: That he is the Secretary of the within named The Strike Breakers' Pipe Line Company; that he has read the foregoing Petition for a right of way for pipe line and knows the contents thereof and that the matters and things therein stated are true of his own knowledge; that the list of officers and stockholders attached to said petition as Exhibits C and D are true and correct lists, and that said corporation, by

resolution of its board of directors has authorized this application for a right of way to be made.

Charles H. Harris.

Subscribed and sworn to before me this 5th day of August
A. D. 1920.

My Commission expires September 26, 1923.

Frederick A. Fleming,

Notary Public.

The petition with the exhibits is filed in the local Land Office to be transmitted to the General Land Office as prescribed by Rule 33. According to Rule 34 they are then submitted to the Secretary of the Interior and returned to the local land office. This Rule 34 was originally limited to the Reservoir Act and whether the above petition would require to be submitted to the Secretary of the Interior is not clear.

Pipe Line Carry for Government and Others.

Every lease of oil land under the Oil and Gas Act must provide that the lessee, whether owner or operator, or owner of a controlling interest in any pipe line shall at reasonable rates and without discrimination carry government oil or the oil of any person not the owner of the pipe line operating a lease, or purchasing oil under the provisions of the Act. No right of way for transportation is to be granted except under the conditions of this Section 28.

If the pipe line becomes a common carrier, upon assuming such status it would be bound to carry oil for all persons and the repetition of these conditions is surplusage.

The only apparent qualification to the common carrier covenant is the phrase "any citizen or company not the owner of any pipe line" which may be an intimation that it is not bound to carry the oil of a competing pipe line.

Combinations of Lessees. Control.

In section 27 is a provision allowing any number of lessees to combine to carry on a refinery or build a pipe line or lines of railroad for joint transportation of oil, which right of combina-

tion they would have on general principles without the special permission of the Act except that the Act provides that such combination must be subject to the approval of the Secretary of the Interior.

Then follows a general clause that if any such combination amounts to a conspiracy or an unlawful trust the lease thereof shall be forfeited by appropriate Court proceedings, which would seem to mean that any lessees entering into any such unlawful combination would place that lease in jeopardy of forfeiture.

This section 27 seems to amount to nothing more than this; that a combination which was intended to prevent an output of oil or gas by any unlawful arrangement would become subject to judicial attack, the lease becoming forfeit as a part of the assets of the conspiring parties. The conditions under which action on this provision of this section might arise are so complicated that they cannot be anticipated.

Regulations of Easements.

Section 29 requires that all permits and leases shall reserve to the Secretary of the Interior the right to regulate the enjoyment of easements including rights of way, which provision is complied with by expressing such reserved power in the forms of both the permit and the lease printed in the regulation circulars.

Requisition of Pipe Line by President.

Under the terms of section 12 of the Act to provide for the national security and defense, approved August 10, 1917, and which seems to be still in force, the President is authorized, for the purposes mentioned in the Act, to requisition and take over for use or operation by the government any pipe line or mine. Stat. L. 1917, 1st Sess. 279. The contingency of such a requisition is doubtless remote.

Revenue Taxes on Transportation.

By the Revenue Act, approved February 24, 1919, amending sec. 500 of the Revenue Act of 1917, there is imposed upon the transportation of oil by pipe line, "A tax equivalent to 8 per centum of the amount paid for the transportation on or after

such date of oil by pipe line." Stat. L. 1919, 3d Sess. sec. 500 sub. e, page 1102. The date referred to in the above quotation is April 1, 1919.

Section 501, sub. d, of the same laws provides that the tax shall apply to all transportation by pipe line, and provides further:—"In case no charge for transportation is made, by reason of ownership of the commodity transported, or if for any other reason, the person transporting by pipe line shall pay a tax equivalent to the tax which would be imposed if such person received payment for such transportation, and if the tax cannot be computed from actual bona fide rates or tariffs, it shall be computed (1) on the basis of the rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or (2) if no such rates or tariffs exist, on the basis of a reasonable charge for such transportation, as determined by the Commissioner."

Section 502 provides that the carrier shall collect the amount of the tax and make monthly return under oath, in duplicate, and pay the taxes so collected to the collector of the district.

Pipe Line—Common Carrier.

In the *Pipe Line cases*, 234 U. S. 548, considering the Hepburn Act on Interstate Statute, it was held that it applied to a combination of pipe lines controlled by the Standard Oil Company. That it required the pipe lines as common carriers to transport oil but it did not disallow them to discontinue business and that the transportation of oil from State to State was interstate commerce and that the act was constitutional both as to existing and future pipe lines but that the transportation of oil across the state line to the refineries of the owner of the oil was not interstate commerce. It reversed in part and affirmed in part, *Prairie Oil and Gas Co. v. United States*, 204 Fed. 798.

The finding of the corporation commissioner that a pipe line company has become a common carrier will not be disturbed on appeal. Where a pipe line has acted as a common carrier it cannot complain of the unconstitutionality of an Act after it has enjoyed the benefits of the Act. *Pierce Oil Co. v. Phoenix Refining Co.* 190 Pac. 857 (Okla.).

For other decisions and incidents pertaining to Pipe Lines, see page 165.

CHAPTER 90.

FORMS.

FORMS OF ARTICLES OF INCORPORATION.

We give below forms of Articles of Incorporation of Oil Companies and of Pipe Line Companies intended to operate within the State of Colorado, or elsewhere after incorporation. It is not practicable, nor within the scope of this work, to indicate the different requirements of the different states, in the preparation of the charter of a corporation. The following forms contain all the requirements of the Colorado Statutes.

ARTICLES OF INCORPORATION

WHEREAS Louis Hough, Leverett Davis, and Edward J. Gagnon, all of the City and County of Denver, State of Colorado, have associated themselves together for purposes of incorporation under THE GENERAL INCORPORATION ACTS OF THE STATE OF COLORADO, they do therefore make, sign and acknowledge these duplicate Certificates in writing, which, when filed, shall constitute the ARTICLES OF INCORPORATION of the within named Company.

Article 1. Name.

The Name of said Company shall be "THE BLUE DRAGON OIL COMPANY."

Article 2. Object.

The Objects for which said Company is created are to bore, drill, sink and search for oil, and incidentally, for natural gas, and to apply for and secure permits and leases on the Public Domain under the Oil Leasing Act approved February 25, 1920 (Public No. 146) and to purchase or lease oil wells and oil

bearing land and howsoever acquired to prospect the same for oil and gas and to work the same and to sell, ship, pipe and refine the oil and other products of such wells.

And to buy and sell petroleum and the by-products of oil wells, including natural gas, and to manufacture and deal in all the products of petroleum.

And to do all things incident to the acquisition, ownership and disposal of oil wells and oil products.

Article 3. Duration.

The Term of Existence of said Company shall be twenty years.

Article 4. Shares.

The Capital Stock of said Company shall be (\$100,000) One Hundred Thousand Dollars, divided into One Hundred Thousand and (100,000) shares of One Dollar each.

Article 5. Directors.

The Number of Directors of said Company shall be Five, and the names of those who shall manage the affairs of the Company for the first year of its existence are Louis Hough, Leverett Davis, Edward J. Gagnon, all of Denver, Colorado and Albert H. Fay, of Washington, District of Columbia, and Edward J. Goppert, of Cody, Wyoming.

Article 6. Office.

The Principal Office of said Company shall be kept at the City of Boulder, in the County of Boulder in said State, and the Principal Business of said Company shall be carried on in said County of Boulder.

Article 7. Assessments.

The Stock of said Company shall be NON-ASSESSABLE.

Article 8. By-laws.

The Board of Directors shall have power to make such prudential By-Laws as they may deem proper for the management of the affairs of the Company, not inconsistent with the laws of this State, for the purpose of carrying on all kinds of business within the objects and purposes of such Company.

Article 9. Cumulative Voting.

Cumulative voting of the stock of said Company shall not be allowed.

IN WITNESS WHEREOF the said Incorporators have hereunto set their hands and seals this 14th day of August, A. D. 1920.

Louis Hough [SEAL.]

Leverett Davis [SEAL.]

Edward J. Gagnon [SEAL.]

STATE OF COLORADO }
CITY AND COUNTY OF DENVER } ss.

I, Frederic A. Fleming a Notary Public in and for said City and County, do hereby certify that Louis Hough, Leverett Davis and Edward J. Gagnon who are personally known to me to be the same persons described in and who executed the within Articles of Incorporation, personally appeared before me this day and acknowledged that they signed, sealed and delivered the same as their free and voluntary act and deed.

Witness my hand and Notarial seal this 14th day of August, A. D. 1920.

My Commission expires September 26, 1923.

Frederic A. Fleming,
Notary Public.

Branch Office Out of State.

Where it is intended to have a branch office or transact part of the business out of the State, the articles must so provide:

Article 10.

A part of the business of the company may be carried on in the County of Wayne, State of Michigan, and a branch office

of the company may be kept in the City of Detroit in said County of Wayne, at which meetings of the directors may be held.

There is no statutory provision for holding stockholders' meetings outside of the State, and it has been held that they may not lawfully be held without the State. *Jones v. Pearl M. Co.*, 20 Colo. 417, 38 Pac. 700.

In the Preamble any three or more persons who may or may not be residents of Colorado, may be named as incorporators. Laws 1919 p. 348.

In Article 1 the name must contain the word Corporation, Association, Company, Society Incorporated, Syndicate or one of the abbreviations "Co." or "Inc." *Id.*, p. 347.

In Article 3 the term of existence may not exceed twenty years. *Id.*, p. 348.

In Article 4, the par value of the stock shall not exceed one hundred dollars per share nor be less than one dollar per share. *Id.*, p. 350.

In Article 5, the directors shall be not less than three nor more than nine. R. S. sec. 977.

In Article 6, if business is to be carried on in more than one county, certificates must be made, and filed in each county in which business is to be done. *Id.*, p. 348.

In Article 7, it must be stated in the case of mining companies whether or not the stock is assessable or non-assessable and the certificates of stock must have printed on their face the word "assessable" or "non-assessable" as the case may be. R. S. Sec. 975.

In Article 8, providing for by-laws to be made by the board of directors is necessary only when it is intended that the directors and not the stockholders shall have that power. R. S. Sec. 853.

In Article 9, it must be stated whether or not cumulative voting of the stock should be allowed. Laws 1919, p. 353.

ARTICLES OF OIL SHALE COMPANY

Article 1. The name of said company shall be The Submarine Oil Shale Company.

Article 2. The purposes for which said company is created are to mine and extract oil bearing shale, to tram or otherwise transport the same to the plant or railroad and to reduce and treat the same for the extraction of petroleum, gasoline, tar, paint, dyes, chemicals, and all other products contained in or reducible from such shale rock, and to manufacture all such things and products and to market and sell the same.

And in such operations to build, erect, purchase and operate mills, reduction works, chemical laboratories, furnaces, stills and plant of any and all kinds necessary or useful to extract and advance to commercial form all the values found in such shale.

To sell and exchange the products and by-products of such shale. To construct and operate tramways to connect with any neighboring railroads and other highways of transportation.

And to keep stores, warehouses and boarding houses in the operation of said business and to do all things incident to or usual in the production, treatment and disposal of shale and the products of shale.

And to acquire oil shale lands or interests in the same by purchase, private leases or leases from the United States under the Oil leasing bill approved February 25, 1920 (Public No. 146) or by sublease or in any other legal manner and to perfect title to located Oil Shale claims by patent and from time to time to demise or sell lands or interests acquired and to deal in oil shale lands generally.

The Preamble, other Articles and the acknowledgment as in form on page 906.

ARTICLES OF OIL PIPE LINE COMPANY

Article 1. The name of said Company shall be The Venture Oil Pipe Line Company.

Article 2. The objects and purposes for which said Company is created are to acquire by purchase or otherwise, or by the right of the exercise of eminent domain, a right of way for an oil pipe line, and to construct and maintain such pipe line for the carriage and transportation of oil on its own behalf and for hire, from oil wells along the course and route of said pipe

line, in the County of Boulder, said State, to tanks to be constructed and maintained at the easterly terminus of said pipe line. Said line begins at a point near the Southeast corner of section 36 Township 2 South Range 69 West of the 6th P. M. and runs thence in an easterly direction a distance of ten miles to the easterly terminus of said pipe line at the Southeast corner of section 22 Township 3 South Range 67 West; to acquire in the same manner, and construct branch pipe lines from any and all wells in said locality and in general, to do all things incident to the business of transporting oil in pipe lines, for hire or as broker or agent.

The Preamble and other Articles and acknowledgment as on page 906.

The additional statutory requirements of a pipe line company are that its articles shall state the places from and to which it is intended to construct the proposed line. R. S. sec. 999.

For Right of Way for pipe line over public lands, see page 899.

FORMS OF TRUST AGREEMENTS.

In recent years there has come into extensive use, especially in Texas and Oklahoma, a Trust Agreement or Business Trust, for the management of all kinds of business, but more particularly of late for the conducting of enterprises in the oil business.

Under the trust agreement, the property intended to be operated is conveyed to one or more Trustees who are given full and absolute control of the management, sale and disposition of the estate conveyed, with like power of increasing the estate, as they see fit.

Capital for working operations, when needed, is raised by the sale of certificates showing beneficial interest, issued by the trustees, and the purchasers become beneficiaries under the trust agreement. The agreement fixes the rights and powers of certificate holders or beneficiaries, and specifically provides that they shall have no interest in the property of the estate except to receive such dividends as may be declared by the trustees. In some instances the beneficiaries are given the power by the trust instrument to periodically elect the trustees and to fill vacancies and even to remove a trustee when occasion necessitates

it. It contains limitations so as not to in any manner confer upon the beneficiaries any powers tending to create the relation of a partnership, and provides that only the estate shall be liable for any act of the trustee.

Advantages of the Trust.

It is contended that the trust agreement has numerous advantages over the corporation or joint-stock association. Some of the advantages suggested are that the plan furnishes a flexible capital which can be increased or diminished at pleasure; the right to remove the trustees at will, where that power is given in the instrument; relief from heavy taxes both state and federal on the mere right to do business; and from income tax; freedom from the obligation of filing inquisitorial reports; ability of the trustees to do business in any State without being required to comply with the corporation laws of such state and limited or entire non-liability of the shareholders.

Disadvantages of the Trust.

The disadvantages are more in apprehension than present reality. If such trusts conflict with, or violate the incorporation laws of the states where the business trust may be in use, future legislation may attempt to control the trust in much the same manner as the corporation is now controlled. At present, however the trust agreement is more extensively used in states whose laws either do not provide the necessary facilities to a corporation or joint-stock company for carrying on the same business, or whose laws limit and restrict corporations in their right to hold real estate.

Massachusetts Trusts.

In Massachusetts the trust agreement form of carrying on a business has been in use for over a quarter of a century and it may be suggested that its extensive use in that state is due to the fact that, as stated in *Ricker v. American L. & T. Co.*, 140 Mass. 346: "Joint stock companies of the statutory character are not known to the laws of that Commonwealth."

Texas Trusts.

In Texas a different reason exists for the use of the trust agreement. That state has a statute which reads:—

“No private corporation heretofore or hereafter chartered or created, whose main purpose of business is the acquisition or ownership of land by lease, purchase or otherwise, shall hereafter be permitted to acquire any land within this state by purchase, lease or otherwise.” Acts 1893, page 36; Vernon’s Sayles’ Tex. Civ. Stats., 1914, Article 1176.

The first necessary acquisition by an oil company is the land under which may be the oil, and in Texas such a company is forced to adopt the trust agreement form of conducting its business. If the above Act was passed for the purpose of controlling and limiting the acquisition of lands supposed to contain oil, it might be assumed that legislation may sooner or later seek to place limitations upon oil operations carried on under the trust agreement.

Oklahoma Trust Agreement Act.

An encouraging feature, however, to those in favor of the trust, may be found in the fact that Oklahoma, has recognized the trust agreement by legislative Act. Laws 1919, page 30, Approved March 22.

Its first section provides that express trusts may be created, which is, of course, merely a recognition of the common law right to create a trust.

Section 2 provides that the trust shall be created by a written instrument properly acknowledged, to be recorded in the county wherein is situated any real estate conveyed to the trustee and where the principal office is located or the business conducted, and requires that the trust shall be “limited in the duration thereof either to a definite period of not to exceed twenty-one years, or to the period of the life or lives of the beneficiaries thereof” and that the instrument shall specify the period.

Section 3 says that the instrument “may provide for succession to any trustee” and that “the title to the trust property shall at once vest in the succeeding trustee.”

Section 4 provides that the liability of the trustee to third persons for any Act or omission extends to the whole trust estate, "but no personal liability shall attach to the trustee or the beneficiaries of such trust for any such act, omission or liability."

Rule against Perpetuities.

It will be noticed that the Oklahoma Act limits the duration of the trust to twenty-one years, or "to the period of the life or lives of the beneficiaries thereof." This last alternative raises the interesting question as to what beneficiaries are contemplated. The purpose of the trust is, in most cases of oil adventures, to sell certificates to shareholders, and new ones who so become beneficiaries may be coming in from time to time for an indefinite period of years and extend the trust beyond the time permitted by the rule. For want of known adjudication upon this question as applied to these trusts it will be safer to limit the duration of the trust to a period of a life or lives in being, naming them in the instrument, and twenty-one years thereafter, and thus be safely within the rule.

Judicial Recognition of the Trust Agreement.

Massachusetts has upheld the common law trusts or trust agreements used in that state for the carrying on of business and its Courts have said that the sole right of the *cestuis que trust* is to have the property administered in their interest by the trustees, who are the masters, to receive income while the trust lasts, and their share of the corpus when the trust comes to an end. *Williams v. Milton*, 215 Mass. 1.

In *Crocker v. Malley* (C. C. A.) 250 Fed. 817, the question was whether the Wachuset Realty Company, a common law trust, was liable to income tax under section II, Income Tax Act, 1913, which imposed a tax on the income of corporations, joint stock companies and associations, and the Court held, that in a common law trust which authorized the trustees to collect the income and to pay over to the beneficiaries such portion as the trustees might in their discretion determine to be fairly distributable, the beneficiaries having no right to compel the trus-

tees to pay any sum, the power of the trustees resembled that of directors of a corporation, and as the income could not be deemed that of the beneficiaries until received by them, the trustees, though not subject to taxation as partners, could not be deemed an association nor the income received by them taxable.

Upon Certiorari, the Supreme Court reversed the Circuit Court of Appeals, and held that neither the trustees nor the beneficiaries, nor all together, could be regarded as a joint stock association within the meaning of the Income Tax Law. *Crocker v. Malley*, 249 U. S. 223.

There are many questions concerning the Trust Agreement which may arise, but which have not, to our knowledge, been adjudicated, and no such agreement can be safely entered into without the counsel and advice of a lawyer.

Forms of Trust Agreement.

We give below two forms of a Trust Agreement, the first of which was carefully prepared by Mr. Charles H. Haines, of the Denver Bar, which contains practically all the protection, limitations and powers which will be found necessary in the preparation of such an instrument for conducting any kind of business. It is not necessary as in the case of the Charter of a Corporation that the instrument shall state what the business objects and purposes of the trust may be nor what kind of business is to be carried on.

AGREEMENT AND DECLARATION OF TRUST OF THE GRINNELL TEXAS COMPANY

THIS AGREEMENT AND DECLARATION OF TRUST made this first day of October, 1914, by and between SAMUEL H. CROSBY and L. L. HARRIS, both of the County of Poweshiek, State of Iowa, parties of the first part, and J. H. T. MAIN and EVAN S. EVANS, also of the County of Poweshiek and State of Iowa, acting for themselves and all other persons who may hereafter at any time or in any manner become shareholders in "The Grinnell Texas Company" as hereinafter provided, parties of the second part, and WILLIAM T. MOYLE and SAMUEL J.

POOLEY, also of the County of Poweshiek and State of Iowa, acting for themselves and all persons who may succeed them as trustees under this agreement, parties of the third part,

WITNESSETH:

THAT WHEREAS parties of the first part have originated and developed a plan for the reclamation of land in the State of Texas by means of dikes and drainage, and for the improvement, cultivation and ultimate sale of such lands at a profit, as it is expected, and to that end have acquired certain interests in certain lands as hereinafter more definitely set forth, and have had said lands surveyed, and have had maps, plats, plans, profiles and other charts made for the necessary dikes, ditches and other works for reclaiming said lands, and have had soil tests made and opinions of experts given as to the feasibility of their said plan, all at an expense to themselves exceeding \$12,000.00, in addition to the notes hereinafter assumed by the Trustees, copies of which said surveys, maps, plats, plans, profiles, charts and opinions have been submitted to parties of the second and third parts; and

WHEREAS The value of the interest in said real estate so acquired by parties of the first part is, as all parties hereto firmly believe, greatly in excess of \$12,000.00, and large profits can be made by carrying out said plans; and

WHEREAS Said parties of the first part desire to obtain the financial assistance and co-operation of parties of the second part and all other persons who may desire to become shareholders in THE GRINNELL TEXAS COMPANY, as hereinafter provided, in carrying out said plans and in acquiring, improving, cultivating, selling and dealing in other lands in the State of Texas, and in carrying on a general agricultural, live stock and land business; and

WHEREAS It is the desire and intention of all parties hereto to provide a method of financing said enterprise by which a large number of small contributors, including parties of the second part, may, by combining their contributions, secure the benefits and profits to be made by a large investment in said enterprise, and which shall relieve the contributors of the necessity of giving personal attention to the details of such business and which

shall permit the aggregate capital to be invested in real estate while the interest of each contributor shall remain personal property in the form of a negotiable certificate, and shall avoid personal and individual liability on the part of the contributors for the obligations incurred in the management of the property and business, and shall secure to the contributors, subject to the payment of all debts, costs and expenses, the return of their capital invested, together with a fair proportion of the profits to be made upon such investment, and shall secure to parties of the first part the return of their capital invested upon equal terms with the capital invested by the contributors, together with the same proportion of profit on their investment which the contributors receive and in addition thereto, but subsequent to the return of all capital invested, the compensation to which parties of the first part are entitled for originating and incurring the risk of the initial expense of the enterprise; and

WHEREAS The parties hereto believe that the objects above mentioned can be best attained by placing such contributions in the hands of trustees to invest with full power to manage the property and business subject to the obligation of accounting to the contributors, their administrators, executors or assigns for the income arising therefrom, and finally for the capital invested and the profits thereon; and

WHEREAS, Parties of the first part are willing and agree to contribute to such trust the property above referred to and hereinafter more specifically described at a valuation of \$12,000.00 in return for share certificates as herein provided, and parties of the second part are willing and desire to participate in the benefits of such trust and agree to contribute thereto in cash at least one hundred dollars each, in return for similar certificates, and parties of the third part are willing to act as interim trustees of said trust under this instrument and hereby accept the said office;

NOW THEREFORE The terms and conditions of said trust are hereby declared to be as follows:

First. At all times, except in emergencies as hereinafter provided, there shall be two trustees of the assets of the trust estate who shall be elected by the shareholders annually. WILLIAM

T. MOYLE and SAMUEL J. POOLEY, the parties of the third part, are hereby designated as, and hereby accept the office of, first or interim trustees of this trust, to serve until their successors are elected at the first annual meeting of the shareholders, which shall be held without further notice at the office of The Grinnell Savings Bank in the City of Grinnell, County of Poweshiek and State of Iowa, on Monday, the fourth day of January, 1915, at the hour of ten o'clock in the forenoon. At the time and place designated the shareholders shall meet and select two trustees to serve for one year or until their successors are elected and have qualified as hereinafter provided. At such meeting, if a quorum be present, the old trustees shall make a full report of their management of the trust estate and its condition; their books shall be audited by a committee of the shareholders; and new trustees shall be elected for the ensuing year. Thereafter the trustees serving during the months of December or January of each year shall call a meeting of the shareholders to be held at Grinnell, Iowa, on some convenient date during the month of January, notice of which meeting shall be mailed to all shareholders at their respective addresses, as the same appear on the trustees' books, not less than five days nor more than thirty days prior to the date of such meeting. In case, for any reason, the annual meeting is not held in the month of January, as above provided, it shall be the duty of the trustees to call such meeting as promptly as possible thereafter, and any five holders of common shares or a less number owning in the aggregate ten per cent (10%) of the outstanding common shares may call an annual meeting after the thirty-first day of January if none has been held that year.

Second. The trustees shall receive the property of parties of the first part hereinabove mentioned and hereinafter more particularly described, and the contributions of parties of the second part and all other persons who desire to become shareholders hereunder, subject to their power to refuse contributions as hereinafter described; and shall invest said money and manage said property and carry on all the business of the company free from any control, restraint, or interference on the part of the shareholders, with the following powers, to-wit:

(a) To acquire by purchase, lease, exchange, or in any other lawful manner, real estate or any interest therein, to improve the same by drainage, irrigation, erecting buildings thereon, or in any other manner deemed by them to be expedient.

(b) To farm, till, set to trees, or otherwise use and employ lands held by them in fee or under lease; to engage in agriculture, horticulture, the raising of live-stock; to engage in any manufacture or industry for the utilization or preparation for sale of the products of agriculture, horticulture and stock raising, or of any valuable thing in or appurtenant to lands held by them; to buy and sell all such products.

(c) To manage and control the lands, works and improvements by them acquired, and to enlarge or improve the same in whatever manner they deem expedient, and to maintain the same in good repair, order and condition; and to receive the rents, profits and income arising from the trust premises.

(d) To make any arrangements with the owners of the adjoining or adjacent lands in their judgment deemed expedient for the improvement and development of the lands, and to acquire any rights or easements that they shall deem requisite.

(e) To let, lease, sell, exchange, or otherwise in any lawful manner to dispose of, for such sums and upon such terms as they deem wise, all or any part of, or any interest in, the lands, works and improvements in their hands as trustees.

(f) To raise or borrow money and give the obligations of the trustees therefor for the purpose of the trust from time to time as they shall think proper; and to mortgage, pledge, hypothecate, or otherwise encumber, the whole or any part of the trust estate in such manner and on such terms as they shall think proper for securing the repayment of any moneys so raised or borrowed; and to pay off any such mortgage or charge, or to make a new mortgage or charge for any sum or sums; to pay commissions to promoters and brokers for the sale of shares or securities; to pay legal charges, trustees' compensations or commissions, and all other proper charges in connection therewith.

(g) To insure the buildings or improvements against loss or damage by fire or other casualty; to procure liability insurance or marine insurance; to procure and require any other insurance

or indemnity they may deem necessary, and to apply the moneys received under any insurance or indemnity in any proper manner to the trust premises.

(h) To buy or in any other lawful manner to acquire, sell, or in any other lawful manner to dispose of, any and every kind of personal property by the trustees deemed necessary, profitable or advantageous to the trust estate.

(i) The trustees shall hold the legal title to all property at any time belonging to this trust and, subject only to the specific limitations herein contained, they shall have the absolute control, management and disposition thereof and shall likewise have the absolute control of the conduct of all business of the trust.

(j) The trustees shall have authority at their discretion to adopt a seal and cause a description and impression thereof to be recorded, and may execute such instruments under such seal as they may deem best for and on behalf of the trust estate; to make all such contracts as they may deem expedient in the conduct of the business of the trust; from time to time release, sell, exchange or otherwise dispose of at public or private sale any or all of the trust property, whether real or personal, for such prices and upon such terms as to credit or otherwise as they may deem expedient; to confer such power and authority on officers and agents appointed by them as they shall deem expedient; to loan any money from time to time in the hands of the trustees, with or without security, on such terms as they may deem expedient; to collect, sue for, receive and receipt for all sums of money at any time becoming due to said trust; to employ counsel and to begin, prosecute, defend and settle suits at law, in equity or otherwise, and to compromise or refer to arbitration any claims in favor of or against the trust; and in general to do all such matters and things as in their judgment will promote or advance the business which they are authorized to carry on, although such matters and things may be neither specifically authorized nor incidental to any matters or things specifically authorized.

(k) The enumeration of powers herein contained shall not be construed in any way as a limitation upon the general powers conferred upon the trustees hereby.

Third. The title to all property, both real and personal, taken by the trustees under this agreement shall vest in them in joint estate or ownership, and not as tenants or owners in common, and in the survivor of them and the heirs and assigns of such survivor, subject, however, to this defeasance in case the property be not conveyed or assigned by them under the powers herein expressed, to-wit: That when successors in trust have been selected by the shareholders as herein provided and have qualified by accepting the office and complying with any other conditions which the shareholders may impose, then all the right, title and interest of the former trustee or trustees in any and all property of every kind and nature held by them at that time under this trust shall immediately terminate and shall vest in the new trustees with all the power and authority, and subject to all the obligations of any and all of their predecessors in trust. The heirs, executors, administrators or testamentary assigns of a deceased sole trustee in whom the title to any property under this trust may vest by virtue of the terms of this instrument or by the terms of any assignment or conveyance to any trustee or trustees, shall be dry trustees of the legal title merely, without any obligation, power or authority to sell, mortgage, convey or otherwise deal with the same, and such title as they may have shall terminate upon the selection and qualification of new trustees by the shareholders under this agreement, and shall vest in such new trustees with all the powers and authority conferred upon any trustees by this instrument.

Fourth. So far as practicable, all business which the trustees shall conduct under this trust agreement shall be conducted in the name of THE GRINNELL TEXAS COMPANY, which name shall be deemed to be the collective and continuing name of the trustee or trustees serving at any time and his or their predecessors and successors, but which shall not be deemed to indicate the collective name of the shareholders. The trustees may receive all contracts, obligations conveyances and assignments, and may execute all contracts, obligations, conveyances and assignments on behalf of the trust estate in that name, adding thereto in cases where they execute any such contract, obligation, conveyance or assignment, the names of the trustees

who executed the same. However, any trustees may, when, under the advice of counsel or otherwise, it is deemed advisable, receive or execute contracts, obligations, conveyances, or assignments in their own names as trustees without the use of the collective name, and such contract, obligation, conveyance or assignment, whether in the name of THE GRINNELL TEXAS COMPANY or the then trustees in their own names as such, shall operate for the benefit of, or shall bind, as the case may be, the then trustees and the survivor of them and their or his successor or successors in trust under this agreement.

Fifth. At the regular annual meeting of the shareholders, any business affecting this trust may be transacted without specific mention thereof in the notice of the meeting, except as otherwise herein specified. The trustees or any five holders of common shares or a less number owning in the aggregate ten per cent (10%) of the outstanding common shares may at any time, by giving notice in the same manner as is required for an annual meeting of the shareholders, call a special meeting of the shareholders, to be held at Grinnell, Iowa, to take action upon any matter which may be submitted to them respecting this trust, provided the business to be transacted at such meeting is specified in the notice. The shareholders may at such a meeting remove one or both of the trustees and fill the vacancy or vacancies so caused, or may fill vacancies caused by the death, resignation, incapacity, or refusal to act of both trustees or a sole trustee. At all shareholders' meetings a chairman and a secretary shall be selected from among their number, who shall perform the respective duties usually incident to such office. The minutes of the meeting shall be signed by the chairman and the secretary and lodged with the trustees for preservation.

Sixth. Whenever one of the trustees shall die or resign or become incapacitated, the other trustee shall have power to appoint a co-trustee to serve with him until new trustees shall be selected, as herein provided, and shall qualify, and as soon as such co-trustees shall have qualified by accepting the office and complying with any requirements that may be imposed by the shareholders, title to all property belonging to the trust estate shall vest in him jointly with the continuing trustee in the same

manner and with the same force and effect, and with the same powers, as if they had been selected by the shareholders as joint trustees at one and the same time as herein provided. In such case the continuing trustee shall file in the office of the Recorder of each and every county in which the trustees hold any interest in real estate, appropriate proof of the fact of the death, resignation, incapacity, or removal of the former co-trustee, together with a certificate of the appointment and qualification of the new co-trustee, and the written acceptance of such new co-trustee, and such an instrument when recorded shall be deemed conclusive evidence in favor of strangers dealing with the trustees, of the facts therein recited.

Seventh. Whenever at an annual or special meeting of the shareholders new trustees shall be elected and shall qualify, it shall be the duty of the former trustees and each of them, or of the former trustee if there be only one, to deliver to the new trustees a certificate of the fact that their or his term of office has expired, or that they or he had resigned or had been removed, or such other circumstance as made proper the selection of new trustees by the shareholders, and that the new trustees, whose names shall be designated in the certificate, have been duly elected to the office and have qualified, and the new trustee shall record such certificate in the office of the Recorder of each and every county in which any real estate belonging to the trust is situated, together with their written acceptance of the office, and when such papers are so recorded they shall be conclusive evidence of the facts therein recited in favor of any person relying thereon. Nothing herein contained shall be construed to mean that it shall be necessary to file a certificate of the reelection of the former trustees, but all persons may rely upon the absence from the records of a certificate of the election of new trustees as conclusive evidence that the former trustees have been duly continued in office.

Eighth. Whenever through any occurrence or in any event, there shall be no active trustee of the trust estate capable of making the certificate of the election of the new trustee required by the foregoing paragraph, or when any former trustee shall fail or refuse to make such certificate, then the President and the

Secretary of the shareholders' meeting at which new trustees were selected shall make the certificate which, when filed with the acceptance of the new trustees, shall have the same conclusive effect as a certificate of the former trustees.

Ninth. Whenever after the retirement of any trustees or trustee under this agreement, from office in any manner, any successors or successor in trust shall demand of them or him that they or he execute any conveyance, assignment or other instrument of further assurance of the title which they or he had formerly held in trust, they or he shall comply with such demand unless the same shall be inconsistent with some previous grant or act of the former trustees or trustee.

However, nothing in this paragraph or elsewhere in this instrument shall be deemed to indicate that it shall be necessary to obtain any kind of a certificate or conveyance or assignment or other instrument to terminate the title or ownership or power or authority of any retiring trustee or trustees, or to vest the same in his or their duly chosen and qualified successor or successors in trust; but such title, ownership, power and authority shall terminate in the former trustee or trustees and vest in the new trustee or trustees immediately upon the selection, acceptance and qualification of such new trustee or trustees, without any act whatsoever on the part of the former trustee or trustees.

Tenth. At any time when there are two qualified trustees under this trust they shall act with reference to the trust estate jointly only, and neither shall have authority to convey, mortgage, or encumber any part of, or interest in, the trust estate by his individual act unless his co-trustee shall have conferred such authority upon him by a power of attorney in writing, which shall specify the act which such trustee is authorized to perform in their joint names, and the trustee so authorized may under such circumstances bind the trust estate by his act in their joint names in the respect mentioned in the power of attorney. The trustees may jointly appoint an attorney to act in their joint names for the performance of any act which they might lawfully perform with reference to the trust estate. Whenever there is a sole trustee he shall have no power or authority to perform any

act with reference to the trust estate, except to appoint a co-trustee or to call a meeting of the shareholders.

Eleventh. No shareholder shall have any authority to act for or on behalf of the other shareholders individually or collectively, or for or on behalf of either trustee or both trustees jointly, except by virtue of a valid power of attorney as hereinabove provided, nor shall the shareholders collectively have any power or authority to control the property or affairs of the trustees or to direct or control the trustees, except to remove one or both of them, and to select a new trustee or trustees as hereinabove provided. The shareholders shall not have any estate, right, title or interest in any of the property of the trust estate, save and except the right to receive such cash distributions as the trustees may make under the power and authority herein conferred upon them. Neither shall the shareholders have any right to sue for a partition or distribution of the trust estate or any part thereof, until the term of the trust, as herein limited, has expired or the shareholders have ordered that it be wound up as herein provided, and in such case the shareholders shall receive their respective shares only in cash. The trustees shall not be required to render an account to any shareholder individually, but shall be required to render an account at each annual meeting of the shareholders and at such special meetings as they may be requested so to do by a proper vote of the shareholders. No shareholder may sue for an accounting except upon the failure or refusal of the trustees to render an account as hereinabove provided. Whenever one or both trustees retire, he or they shall render an account to the successors in trust. If there were two former trustees and only one retired, they shall nevertheless render a joint account to the date of the retirement of one. The trustees shall always have the right, when they deem it necessary, to demand, and if necessary, to sue for an accounting of any former trustee or trustees.

Twelfth. The trustees shall issue share certificates to the contributors to the trust estate of two classes, one to be designated "preferred share certificates" and the other "common share certificates." To every contributor of the sum of \$100.00 in cash, or an even multiple thereof, and to every contributor of

property, accepted by the trustees by agreement with the contributor at its true valuation, the trustee shall issue a certificate for one preferred share in the trust estate for each \$100.00 of value so contributed, whether in cash or in property, and also a certificate for one common share for each preferred share so issued, and shall at the same time issue to parties of the first part, as part payment for the property contributed by them as hereinafter provided, one common share for each preferred share so issued. The holders of preferred and common shares respectively shall have and exercise all the rights and privileges which are conferred upon them by the terms of their certificates, and by this agreement and amendments thereto, but in case of any conflict between the terms of the certificates and the terms of any other part of this agreement and amendments thereto, the words of such other part of this agreement and amendments shall control the words appearing in the certificates.

Thirteenth. The form of the certificate of both common and preferred shares shall be substantially as follows:

THE GRINNELL TEXAS COMPANY

Number Number of Shares

THIS CERTIFIES that is the owner of (preferred or common) shares in The Grinnell Texas Company, a trust created by a certain Agreement and Declaration of Trust, dated October 1, 1914, and executed by Samuel H. Crosby and L. L. Harris, as parties of the first part; J. H. T. Main and Evan S. Evans, as parties of the second part; and William T. Moyle and Samuel J. Pooley as parties of the third part, which instrument is now on file with at Grinnell, Iowa, and which is to be kept on file at all times until the termination of said trust with said bank or trust company, or such other bank or trust company in Grinnell, Iowa, as the trustees may from time to time designate, subject to inspection by the holder of this certificate, and to which instrument the holder is hereby referred for a more accurate and detailed statement of his status and rights. The holder hereof by accepting this certificate assents to all the terms and conditions of said Agreement and Declaration of Trust, and consents

that the terms of this certificate shall be in all respects controlled thereby.

For every \$100.00 contributed to the trust estate, certificates for one preferred share and two common shares therein have been or shall be issued.

The holders of preferred share certificates shall be entitled to receive out of the trust estate the sum of \$100.00 for each share represented thereby after all debts have been paid and before any dividends are paid to the holders of common share certificates. When \$100.00 has been paid to the holder of any preferred share certificate for each share represented thereby, the certificate shall be surrendered to the trustees and cancelled. The trustees may, at their option, at any time retire all or any of the preferred certificates by any of the methods provided in the Agreement and Declaration of Trust, or make payments on account of the principal represented by such certificates, which payments shall be endorsed on the certificate. Preferred shareholders shall have no right to vote at shareholders' meetings, such meetings being controlled solely by holders of common shares.

After the retirement of all preferred shares, the holders of common share certificates shall be entitled to receive a pro rata distribution of such portion of the net annual income as the trustees may appropriate or set aside for that purpose. Upon a reduction of the capital or the winding up of the trust as in the Agreement and Declaration of Trust provided, they shall be entitled to share pro rata in the principal of the trust estate. The holders of common share certificates shall be entitled to vote at shareholders' meetings, either in person or by proxy, casting one vote for each share.

No shareholder of either class shall have any title, estate or ownership in the property held by the trustees and no right to interfere with the management thereof by the trustees, but the absolute title to all property in the trust estate shall be in the trustees, and they shall have the sole power to manage the same. The only interest of any shareholder shall be to receive the cash distributions hereinabove mentioned, payable at the discretion of the trustees, pursuant to the terms of the agreement

and declaration of trust. No shareholder shall be liable in any manner for the debts or default of the trustees in the management of the trust estate or otherwise, nor shall he be subjected to any such liability by any action of the shareholders. Neither shall any shareholder be subject to assessment on account of such interest.

The trust created by said Agreement and Declaration of Trust may be terminated by the shareholders at any time as in said instrument provided, and shall in any case terminate on or before October 1, 1934.

This certificate and the interest represented thereby constitutes personal property and is transferable by assignment, but no assignment hereof shall affect the trustees to their prejudice until this certificate with proper evidence of the transfer of interest shall be surrendered to the trustees for cancellation and a new certificate demanded.

The trustees will at all time maintain an office in the City of Grinnell, State of Iowa, for issuing and transferring shares, and they may maintain offices elsewhere at their discretion.

IN WITNESS WHEREOF the trustees have hereunto subscribed the name of the The Grinnell Texas Company and their names at the City of Grinnell in the State of Iowa, this day of, 19.....

THE GRINNELL TEXAS COMPANY

By

.....

Trustees.

ENDORSEMENT

FOR VALUE RECEIVED hereby sell, assign and transfer unto (preferred or common) shares in The Grinnell Texas Company represented by the within certificate and hereby authorize the transfer of said shares on the books of said company.

WITNESS my hand this day of, 19..... In the Presence of

In addition to the foregoing, preferred share certificates shall have the word "Preferred" printed plainly upon the face and the back thereof, and the common share certificates shall have the word "Common" so printed thereon. The opening sentence of each Certificate shall plainly state the class of shares which it represents.

Fourteenth. Whenever the trustees in their judgment believe that they can advantageously use more capital in the management of the trust business, they may solicit contributions on the terms herein provided, or they may borrow money, or purchase property upon credit or otherwise obligate the trust estate. Also, whenever they deem it for the best interests of the estate, they may refuse to accept contributions, or may reduce the amount of capital in their hands by discharging the debts of the trust estate or by retiring preferred shares or making payments thereon, or by paying dividends on common shares, provided the preferred shares have been first retired. The trustees may, if they deem it for the best interests of the trust estate, borrow money to retire preferred shares, or they may issue shares for the purpose of raising funds to discharge debts.

Fifteenth. The trustees shall on or before October 1, 1934, but not earlier than January 1, 1933, unless so ordered by a vote of two-thirds of the outstanding common shares, convert all the property in the trust estate into cash, discharge the debts, retire the preferred shares and distribute the balance among the holders of the common shares, thereby winding up the trust. At any time the shareholders may at an annual or special meeting, by a vote of two-thirds of the common shares outstanding, order the trustees to proceed to wind up the trust in the manner aforesaid with all reasonable dispatch provided such proposed action was stated in the notice of the meeting.

Sixteenth. Preferred shareholders shall not be entitled to vote such shares at shareholders' meetings, but holders of common shares shall be entitled to one vote for each common share held, which vote may be cast by the shareholder in person or by proxy. To constitute a quorum for the transaction of business at any shareholders' meeting, it shall be necessary that two-thirds of the common shares outstanding at the time shall be

represented and a majority of the shares so represented shall determine the action of the meeting unless a larger proportion is required by this instrument. Less than a quorum may adjourn a properly called meeting from time to time, but not to exceed ten days at one time, until the presence of a quorum may be obtained.

Seventeenth. The trustees may make, adopt, amend or repeal such by-laws, rules and regulations not inconsistent with the terms of this instrument as they shall deem necessary or desirable for the conduct of their business and for the government of themselves, their agents, servants and representatives.

Eighteenth. The trustees shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of this trust so long as they act in good faith, nor shall they be personally liable for the acts or omissions of each other or for the acts or omissions of any officer, agent or servant elected or appointed by or acting for them. The trustee shall fix the compensation, if any, of all officers and agents whom they may elect or appoint and may also pay to themselves reasonable compensation for their services. They shall keep a share-book with stubs showing the number of each certificate, the name and address of the person to whom the same is issued, the number of shares represented thereby, the consideration for each original issue, and in case of transfers, the number or numbers of the certificate or certificates cancelled which enter into the new certificate. Whenever a certificate is cancelled the cancellation shall be written or stamped or perforated upon the face of the certificate, and the stub shall show the number of the certificate or certificates by which the shares have been reissued. The stub shall also show the amount of all dividends paid on the certificate, the date of such payment, and, upon retirement of any shares, the stub of the last certificate shall show the fact and date of such retirement. The trustees shall also keep a share ledger and proper account books, the latter showing a complete inventory of all the property held under the trust with its original cost, the expense of all improvements placed upon the real estate, and the original cost and expense of the maintenance of all dikes, ditches and other works. It shall not be neces-

sary for the trustees to hold formal meetings or to take any action by motion or resolution, but they shall keep the minutes of all their important transactions. They shall also preserve the minutes of the shareholders' meetings as hereinabove provided. They shall also keep copies of all contracts and written agreements entered into by them on behalf of the trust. Each and every one of the above mentioned books, records and papers shall belong to the trust estate, and at the time of the selection of new trustees shall be delivered by the retiring to the incoming trustees.

Nineteenth. No action of the trustees in dealing with strangers to the trust, shall be held to be invalid or outside of their powers as trustees, to the prejudice of any such stranger, provided, he has dealt with the trustees in good faith; and no person dealing with the trustees shall be bound to see to the application of the purchase money or other consideration paid or delivered by or for him to or for the trustees.

Twentieth. Trustees may be elected or appointed from the body of the shareholders or otherwise, and any trustee may acquire, own and dispose of shares in this trust as freely as if he were not a trustee.

Twenty-first. Any decision of the trustees made in good faith as to what constitutes income of the trust estate and what constitutes principal, shall be conclusive upon all persons interested therein. Whenever the trustees desire to pay any dividend on the principal of the preferred shares, less than the entire face value of all outstanding preferred shares, they may determine the number of shares which can be retired by the amount of money which they deem best to appropriate for that purpose, and draw by lot such number of shares from the total number of shares outstanding, which shares so drawn shall be retired; or they may invite bids from the holders of preferred shares and apply the money, so far as it will go, in retiring the shares of the lowest bidders; or they may declare a dividend upon the preferred shares equally.

Twenty-second. In case of the loss or destruction of any certificate for shares, the trustees may, upon such conditions as

they deem expedient, issue a duplicate certificate or certificates in place of the one lost or destroyed.

Twenty-third. The fiscal year of the trustees shall commence on January first and end on December thirty-first of each year.

Twenty-fourth. The death of a shareholder under this trust shall not affect the continuance of the trust, nor shall it entitle the representatives of the deceased shareholder to an accounting, or to take any action in the Courts or elsewhere against the trustees, but the heirs, executors, administrators, or assigns of any deceased shareholder shall succeed to the rights of such decedent under this trust as personal property, upon surrender of the certificate for cancellation with due proof of the succession of the holder.

Twenty-fifth. The trustees shall have no power to bind the shareholders personally, nor to call upon them for the payment of any sum of money or any assessment whatever, other than such sums as each holder may at any time for himself agree to pay by way of subscription to new shares or otherwise.

Twenty-sixth. All persons extending credit to or contracting with or having any claim against the trustees shall look only to the funds and property of the trust estate for the payment of such contract or claim or for the payment of any debt, damage, judgment, or decree, or of any money that may otherwise become due or payable to them from the trustees; so that neither the trustees nor any of them, nor any shareholder present or future shall be personally liable therefor. In every order, contract or obligation which the trustees shall execute, authorize or enter into, it shall be their duty to stipulate or cause to be stipulated that neither the trustees nor the shareholders nor any of them shall be held to any personal liability under or by reason of such order, contract or obligation, and that only the trust estate shall be bound therefor. However, the failure to make such stipulation shall not be deemed to subject the trustees or the shareholders or any of them to personal liability.

Twenty-seventh. It is further expressly provided and declared that in case any trustee or shareholder shall at any time for any reason be held to, or be under, any personal liability as such trustee or shareholder, not due to his acts in bad faith, then

such trustee or shareholder shall be held harmless and indemnified out of the trust estate for any and all loss, cost, damage or expense by reason of such liability, and if at any time the trust estate shall be insufficient to provide for such indemnity and to satisfy all liabilities of and claims against it, then the trust estate shall, in preference and priority over any and all other claims or losses whatsoever, except claims having a priority guaranteed by law, be applied first to the indemnification of the trustees from any loss, cost, damage or expense in connection with any personal liability which they may be under or have incurred, except as aforesaid, and thereafter, to the indemnification in like manner of the shareholders.

Twenty-eighth. This Agreement and Declaration of Trust may be amended or altered in any particular whatsoever, except as regards the exemption from personal liability and the indemnification of the trustees and shareholders, and except as regards the priorities of the preferred shares, at any annual or special meeting of the shareholders, with the consent of the holders of at least two-thirds of the common shares then outstanding, provided notice of the proposed amendment or alteration shall have been given in the call for the meeting; and in case of such alteration or amendment, the same shall thereupon become a part of this Agreement and Declaration of Trust, and a copy thereof shall be recorded in the office of the Recorder in every county in which this Declaration of Trust shall have been recorded, and shall be deposited with the custodian of every copy of this instrument for inspection by the shareholders or other persons having any interest therein.

Twenty-ninth. A duplicate original of this Agreement and Declaration of Trust shall, immediately after its execution, be deposited with The Grinnell Savings Bank in the City of Grinnell, Iowa, for inspection by any shareholder or other person interested in this trust, but the trustees shall have power at any time to change the depository with which such duplicate original is deposited, provided it shall at all times be kept on deposit for the purpose aforesaid with some bank or trust company in said City of Grinnell.

Thirtieth. The record books, account books and papers of the

trustees shall not be open to examination by the shareholders or any of them without the consent of the trustees, except at the time of the annual meeting, or pursuant to a resolution adopted by the shareholders at an annual or special meeting; but the trustees shall comply with all such requirements in that regard as may be imposed by the shareholders at such meetings.

Thirty-first. All trustees shall be bound by the acts of their predecessors so far as the trust estate is concerned, and shall have no power to invalidate contracts or repudiate responsibility for acts of their predecessors in office, except where the person dealing with such predecessors has acted in bad faith.

Thirty-second. The trustees shall assume and pay all costs and expenses connected with the creation of this trust, and the procuring of contributions thereto prior to its creation, and shall assume and pay out of the funds of the trust estate the following notes of parties of the first part, to-wit:

To The Grinnell Savings Bank for \$1,500.00, dated August 13, 1914, due December 13, 1914.

To David C. Peck for \$1,000.00, dated September 5, 1914, due March 5, 1915.

To The Grinnell Savings Bank for \$1,000.00, dated October 14, 1914, due April 14, 1915.

Thirty-third. Parties of the first part covenant with the parties of the second part and with all persons who may hereinafter become shareholders under this agreement, and with the parties of the third part and their successors in trust that they, the said parties of the first part, are the owners of the following described interests in real estate in the State of Texas, subject only to the liens, encumbrances and obligations mentioned in connection therewith, to-wit:

DESCRIPTIONS OF LANDS OMITTED

The said above described lands and the lands more particularly described in the contracts of record as aforesaid aggregating thirty-eight hundred (3,800) acres, more or less.

Thirty-fourth. Parties of the first part further covenant and agree to sell, assign, convey and transfer all their interest in said real estate to parties of the third part and the survivor

of them and the heirs and assigns of such survivor, subject to the defeasance hereinabove mentioned, in trust under this agreement, and therewith to sell and deliver to said trustees and their said successors all of the surveys, maps, plats, plans, profiles, charts and opinions which they have had made of or respecting said lands and the necessary dikes, ditches and works for reclaiming the same at a valuation of \$12,000.00 to be paid by the issuance to them of one hundred twenty (120) preferred shares in the trust estate of THE GRINNELL TEXAS COMPANY as above specified, and two hundred forty (240) common shares in said estate, and the right to receive one common share for every preferred share issued to any other person under this agreement. And they represent and covenant that they have expended in excess of the sum of \$4,000.00 in cash, in addition to the notes hereinabove assumed by the Trustees, in acquiring said interests in said real estate and in procuring such surveys, maps, plats, plans, profiles, charts and opinions, and in investigating and arranging for the development of said land in addition to the entire time of party of the first part, L. L. Harris and a great amount of the time of the party of the first part, Samuel H. Crosby, valued at Eight Thousand Dollars (\$8,000.00) during a period of two years, and that in their opinion said lands when brought under the single control and management of one person or association of persons as a drainage unit, together with the plans which they have developed for the reclamation thereof, are worth in excess of the sum of \$75,000.00.

Thirty-fifth. Parties of the third part agree to accept the office of interim trustees under this agreement; to accept a conveyance of the above described real estate, surveys, maps, plats, plans, profiles, charts and opinions, from parties of the first part; to issue to parties of the first part in consideration therefor certificates for one hundred twenty (120) preferred shares and two hundred forty (240) common shares in THE GRINNELL TEXAS COMPANY; to receive the contributions of parties of the second part; and to issue to them therefor certificates for one preferred share and one common share for each \$100.00 in cash contributed by them; to issue to parties of the first part one common share for each preferred share issued to parties of the

second part, and to issue to parties of the first part one common share for each preferred share issued thereafter; and in all other respects to carry out and perform the duties and obligations imposed upon them by this agreement and declaration of trust.

Thirty-six. The covenants and agreements of each and every party hereto herein contained, are made in consideration of the covenants and agreements of each and every other party to this Agreement and Declaration of Trust.

Thirty-seventh. It shall not be necessary for the trustees to record this instrument or any amendment thereto, or any certificate, acceptance or other instrument herein mentioned, until such time as they shall deem it to be for the best interest of the shareholders to do so, but all such amendments, certificates, acceptances and other instruments provided for herein to be recorded, shall be duly executed and deposited with the bank or trust company in the City of Grinnell, Iowa, which is or may be designated as the depository of this instrument, and such papers shall be kept with this instrument until the trustees shall deem it best to have them recorded; whereupon they shall all be filed for record as herein elsewhere provided. Thereafter all such amendments, certificates, acceptances or other instruments provided for herein shall be promptly recorded.

IN WITNESS WHEREOF the parties above named have executed this instrument in duplicate under their hands and seals in the City of Grinnell, County of Poweshiek and State of Iowa, this first day of December, 1914, as of the date first above written.

Samuel H. Crosby. [SEAL]

L. L. Harris. [SEAL]

Parties of the First Part.

J. H. T. Main. [SEAL]

Evan S. Evans. [SEAL]

Parties of the Second Part.

William T. Moyle [SEAL]

Samuel J. Pooley [SEAL]

Parties of the Third Part.

STATE OF IOWA, }
POWESHIEK COUNTY } ss.

I, H. W. Somers, a Notary Public in and for the County of Poweshiek and State of Iowa, do hereby certify that the above named Samuel H. Crosby, J. H. T. Main, Evan S. Evans, William T. Moyle and Samuel J. Pooley, who are personally known to me and known to me to be the persons whose names are subscribed to the above and foregoing instrument, appeared before me this day personally within the county and state aforesaid, and acknowledged, each for himself, that he signed, sealed and delivered said instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

My notarial commission expires July 4, 1915.

Witness my hand and notarial seal this 16th day of December, 1914.

H. W. Somers,

[SEAL]

Notary Public in and for said County and State.

STATE OF TEXAS, }
COUNTY OF JEFFERSON. } ss.

I, J. S. Edwards, a Notary Public in and for said County and State, do hereby certify that the above named L. L. Harris who is personally known to me, and is known to me to be the person whose name is subscribed to the above and foregoing instrument, appeared before me this day personally within the County and State aforesaid and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

My notarial commission expires June 2, 1915.

Witness my hand and notarial seal this 23d day of November, 1914.

J. S. Edwards,

[SEAL]

Notary Public in and for said County and State.

The second form of agreement, given below, shows careful preparation for a trust running from the grantor to himself as trustee for the benefit of all beneficiaries who may thereafter purchase shares. We have been unable to ascertain who prepared the form, but it is concise. If the details found in the first form given are not essential to the terms of the Trust to be created, the following form should answer in ordinary cases.

**AGREEMENT AND DECLARATION OF TRUST OF
INGRAM PRODUCTION COMPANY.**

STATE OF TEXAS, }
COUNTY OF WICHITA. } ss.

THIS AGREEMENT AND DECLARATION OF TRUST, Made in the City of Wichita Falls, the State of Texas, U. S. A., this Tenth (10th) day of March, A. D. 1920, by Edwin L. Ingram, establishing a Trust Estate and defining the interest, rights and duties of the holders from time to time of Trust Estate Shares to be issued hereunder, together with their assigns, hereafter called "SUBSCRIBERS," and himself, together with his successors, hereinafter called "TRUSTEE," witnesseth:

THAT, WHEREAS, The said Edwin L. Ingram, for the purpose of acquiring, operating and disposing of real and personal property, as Trustee, under the designation of "INGRAM PRODUCTION COMPANY," proposes to issue negotiable Certificates to the extent of Four Million (4,000,000) Common Shares of the expressed value of Five Dollars (\$5.00) each, and one Million (1,000,000) Preferred Shares of the expressed value of One Hundred Dollars (\$100.00) each in the beneficial interest of the Trust Estate hereby established; it being hereby provided that said shares may be issued unto the Subscribers either for cash or by sale and conveyance by them unto the Trustee of real and personal property, contracts, services rendered, or other valuable rights and things for the uses, purposes and benefit of this Trust, and thereby become and be fully paid-up and non-assessable; which Shares shall define the interest of the Subscribers and their assigns in such property; which property shall be detailed and

described in "SCHEDULE A" on the books of the Trustee, and the judgment of the Trustee regarding the value of the property acquired or service rendered shall be conclusive.

NOW THEREFORE, The said Edwin L. Ingram, as Trustee, hereby DECLARES that he will hold said property to be conveyed unto him, as well as all other property he may afterwards acquire as Trustee, together with the proceeds and profits thereof, IN TRUST; that he will engage such property and funds to such business pursuits as he shall deem most advantageous to his Trust; to manage, control, operate and dispose of the same in any part of the world for the benefit of the holders from time to time of Certificates for Shares issued hereunder according to the priorities expressed in said Certificates and in the manner and subject to the stipulations herein contained, to-wit:

FIRST

(a) The Legal Title of the Trustee shall be "TRUSTEE OF INGRAM PRODUCTION COMPANY," and all property so designated shall be construed as belonging to this trust.

(b) In executing all instruments, in writing, the Trustee shall sign "INGRAM PRODUCTION COMPANY," and thereunder sign his own name, either above or before the word TRUSTEE.

SECOND

(a) The Trustee shall hold the legal title to all property at any time belonging to his Trust, and shall have and exercise the exclusive management and control of the same; he shall assume all contracts, obligations and liabilities in connection with or growing out of the property conveyed unto him, and the management of the same in the business of his Trust as hereinbefore specified, and to the extent and value of such property, BUT NOT PERSONALLY; shall agree to hold the Subscribers and their assigns, and any person associated or acting with him, harmless and indemnified from and against any loss, cost, obligation or liability by reason of or in connection with such contract, obligation or liability; he may adopt and use a Common Seal; he may sue for, receive and receipt for all moneys at any time com-

ing due to his Trust; he may employ counsel to begin, prosecute, defend or settle suits at law, in equity or otherwise; he may purchase, lease, option, contract for, locate or otherwise acquire, own, hold, improve, operate, lease, option, grant, mortgage, pledge, hypothecate, redeem, sell or otherwise deal in and dispose of such real and personal property as he shall deem most advantageous to his Trust; he may advertise and exploit the goods, wares, merchandise, properties and methods of his Trust; he may accept and extend credit, borrow and loan money, issue Notes, Bonds, Debentures, Certificates of Interest or other evidences of indebtedness, and may secure the payment thereof by mortgage, pledge of property, deed of trust or otherwise, for such amounts and for such periods of time as he may deem necessary for purposes incidental to the proper carrying out of his Trust, and in general, may do and perform such other acts and things, and transact such other business, not inconsistent with the terms of this instrument or general law either alone or in conjunction with others, as he from time to time may deem best for the benefit of his Trust.

(b) So far as strangers to this Trust are concerned, a resolution by the Trustee authorizing a particular act or thing to be done, shall be conclusive evidence in favor of such strangers that such act is within the powers of the Trustee, and no purchaser from the Trustee, or one loaning money to the Trustee, shall be bound to see the application of the purchase money or the loaned money, or other consideration paid or delivered by or for said purchaser or loaner to or for said Trustee.

THIRD

(a) Edwin L. Ingram shall be the sole Trustee hereunder, and shall hold his office during the continuance of this Trust; provided, however, that in the event of his resignation or death without providing a successor to the Trust, the ADVISORY BOARD shall have the right to appoint a new Trustee in accordance with the terms and stipulations herein contained.

(b) As compensation for marketing the shares to be issued hereunder and acquiring properties for the benefit of this Trust, Edwin L. Ingram, personally, shall be entitled to receive Com-

mon Shares in such amounts as shall equal ten per cent (10%) of the expressed value of the Shares by him disposed of, in which connection he shall have the right to employ brokers, agents, underwriters, salesmen or others to assist him in marketing said Shares, and to pay them reasonable compensation for their services.

(c) As compensation for administering the affairs of the Trust Estate, the Trustee shall be entitled to receive a salary of Three Hundred Dollars (\$300.00) per month, together with such office, traveling and other expenses necessary to incur when performing the services and duties connected with his Trust.

(d) The fiscal year of the Trustee shall end on the Tenth day of March in each year, after which date the Trustee shall submit his Annual Report unto the Subscribers, either in person or by mail to their last registered address.

FOURTH

(a) The Trustee may make, adopt, amend, alter or repeal such by-laws, rules and regulations, not inconsistent with the terms of this instrument, as he may deem necessary for the government of himself, his agents, employees or representatives.

(b) The Trustee may employ, engage, hire, appoint and discharge such skilled and common labor, agents, salesmen, managers, superintendents, officers, Advisory Board and Committees, assistants and representatives as he may from time to time deem necessary to properly operate and conduct the affairs of the Trust Estate, and is hereby empowered and authorized to fix and pay the compensation thereof.

(c) The Trustee shall not be liable for error of judgment in acquiring, holding, developing, operating or disposing of any property for the benefit of his Trusts; nor for losses arising out of any investment; nor for the acts or omissions to act performed or omitted by him in the execution of his Trust in good faith; nor shall he be liable for the acts or omissions to act of any employee, agent, official, Committee, Board or representatives employed or appointed by or acting for or with him, and he shall not be obliged to give bond for the due performance of his Trust.

(d) The Trustee shall keep a complete record of the receipts

and disbursements of all funds and property at any time belonging to his Trust, and shall furnish the Subscribers with Quarterly and Annual Reports showing the physical condition of the Trust Estate.

FIFTH

(a) Common Shares hereunder shall be expressed of the value of Five Dollars (\$5.00) each, and Preferred Shares hereunder shall be expressed of the value of One Hundred Dollars (\$100.00) each.

Preferred Shares hereunder shall entitle the holder thereof to receive cumulative dividends at the rate of eight per cent (8%) per annum, payable quarterly on the (10th) days of March, June, September and December in each year out of the net earnings of the Estate before any dividends are set apart or paid on the Common Shares, and after the two per cent (2%) quarterly dividends have been set apart or paid on the Preferred Shares, One-Third ($\frac{1}{3}$) of the remaining net profits shall be carried to the surplus fund, and the balance remaining thereafter shall be divided equally between the Common and Preferred Shares and distributed among the holders thereof in proportion to their respective holdings.

In the event of liquidation of the assets of the Estate, the proceeds of such liquidation shall first be applied to redeeming the Preferred Shares at the expressed value thereof, together with any accrued and unpaid dividends thereon, after which the Common Shares shall be redeemed at the expressed value thereof to the extent of the remaining undistributed liquidation fund, and the balance remaining thereafter, if any, shall be equally divided among the last holders thereof in proportion to their respective holdings.

(b) As evidence of ownership of such Shares, the Trustee shall issue or cause to be issued unto each Subscriber or assigns, a negotiable Certificate, or Certificates, in which shall be specified the number of Shares by him or her owned; which Certificates shall contain, in substance, the essence of the foregoing provisions.

(c) In case of loss or destruction of any Certificate for Shares

issued hereunder, the Trustee, under such conditions as he may deem expedient, may issue new Certificates in the place of those lost or destroyed, but shall keep a record thereof.

SIXTH

(a) The death of a Subscriber or Trustee during the continuance of this Trust shall not operate to terminate the same, nor shall it entitle the representative of the deceased Subscriber to an accounting, or to take action in the courts or elsewhere against the Trustee, but the Executor, Administrator or Assign of any deceased Subscriber under this Trust shall succeed to the rights of said deceased Subscriber hereunder, upon surrender of the Certificates for shares by him or her owned and new Certificates be issued.

(b) The ownership of Shares issued hereunder shall not entitle the holder thereof to any individual title to the Trust Estate whatsoever or the right to call for a partition or division thereof, or for an accounting, or any voice or control whatsoever of the Trust Property, or the management thereof, or the business connected therewith by the Trustee.

SEVENTH

(a) The Trustee shall have no power to bind the Subscribers personally, and the Subscribers and their assigns, and all firms, corporations, individuals or others extending credit to him, contracting with, or having any claim against the Trustee, shall look only to the property and funds of the Trust for the payment of any debt, damage, judgment, decree or of any money that may otherwise become due and payable unto them from the Trustee, so that neither the Trustee or the Subscribers, present or future, shall ever become personally liable therefor.

(b) In every written order, contract or obligation which the Trustee shall give or enter into, it shall be his duty to stipulate therein that neither the Subscribers nor the Trustee shall be held to any personal liability under or by reason of such contract, order or obligation.

EIGHTH

THIS AGREEMENT AND DECLARATION OF TRUST shall continue in force until terminated by the said Edwin L. Ingram, his successors, administrators, executor, or assigns, by liquidating the assets of the Trust Estate and distributing the proceeds thereof among the then holders of shares issued hereunder, as hereinbefore provided; provided, however, that the duration of this Trust shall in no event continue for a period of time extending beyond twenty-one (21) years from the date of the death of the said Edwin L. Ingram.

IN WITNESS WHEREOF, The said Edwin L. Ingram has hereto set his hand and seal in token of his acceptance of the Trust hereinbefore specified, and in further token of his assent to and approval of the terms of said Trust, the day and year first above written.

Edwin L. Ingram.

[SEAL]

STATE OF TEXAS,)
COUNTY OF WICHITA. } ss.

Before me, the undersigned authority, on this day personally appeared Edwin L. Ingram, to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein stated and in the capacity expressed.

Given under my hand and seal of office on this the 10th day of March, A. D. 1920.

Thos. G. King,
Notary Public in and for Wichita County, Texas..

FORMS OF DRILLING CONTRACTS.

The following forms are suggested for use; the first, in cases where standard tools are to be used in the drilling, and the second where rotary drilling is to be done.

STANDARD TOOLS FORM.

DRILLING AGREEMENT

MEMORANDUM OF AGREEMENT, executed in triplicate this
 day of 1919, between THE MIDWEST
 REFINING COMPANY, hereafter called "Owner," and
, hereafter called "Contractor":

WITNESSETH

That for and in consideration of the promises and agreements
 hereinafter contained, the parties agree as follows:

1. Contractor agrees to drill a certain well for Owner ac-
 cording to the specifications herein contained.

2. Said well shall be located by Owner and shall be upon the
 Quarter of Section, Township
 North, Range West of the 6th P. M.,
 County, State of, known as, and shall be
 known and designated as well No.

3. Contractor will drill said well to the sand,
 and into said sand as deep as designated by Owner.

4. Owner shall furnish at its expense:

- (a) A Standard derrick complete.
- (b) A Standard rig equipment complete with bull wheels, calf
 wheels, rig irons, boiler house, casing pit and sump.
- (c) All necessary cement and all casing to be set in said well.
- (d) All fuel, water, tools, boilers, cordage and other necessary
 equipment for continuous drilling.

5. Contractor shall furnish at his expense:

- (a) All necessary labor for rigging up, and setting of casing
 at specified depths.
- (b) All necessary labor for drilling said well.
- (c) All food and sustenance for said labor, and a suitable
 camp for properly caring for all men working upon said well.

6. Contractor shall:

- (a) Shut off water sand with inch casing, and
 sand with inch casing.

(b) Carry inch casing to depth designated by Owner, but not to exceed feet.

(c) Penetrate sand with inch casing to depth designated by Owner.

(d) Not use smaller than inch casing without express permission of Owner to reduce size of hole.

(e) Make all casing joints tight, allow inspection and approval by Owner or its representatives, and make all strings of casing continuous and unbroken from top to bottom thereof.

(f) Do all work under this contract in a thorough workman-like manner, and have all casing when set open to its full diameter for its entire length, enabling the passage of the next smaller size casing free and unobstructed throughout.

(g) Properly shut off all oil and water sands as Owner may designate.

(h) Furnish to Owner the services of Contractor's employees without extra charge for and in cementing the well.

(i) Clean boilers at least once every two weeks; and if boilers are burned, make necessary repairs.

7. Owner may at any time it sees fit, put its own men on the rig to satisfy itself regarding the condition of the well; and, if Owner is convinced that well is not in shape to be deepened, may withhold payments to Contractor until Contractor has the hole in satisfactory shape.

8. When any string of casing is landed the same shall be tested by Owner, or in the presence of Owner's agents or representatives, or as designated by Owner, as Owner may elect; and, unless Owner shall notify Contractor to the contrary within forty-eight (48) hours after said test, the particular string of casing tested shall be deemed satisfactory and accepted by Owner, and same shall constitute an acceptance by Owner of the work completed to the depth of said string of casing.

9. All material and equipment furnished by Owner shall be in good condition. Contractor shall keep and maintain the same in good condition at Contractor's expense, and, upon completion of well or discontinuance of work, said material and equipment shall be turned over to Owner by Contractor in as good condition, subject, however, to ordinary wear and tear.

10. Contractor shall keep an accurate log of said well, which shall at all times be open to the inspection of Owner, its agents and representatives. A copy of said log shall be furnished by Contractor to Owner each day upon request.

11. Owner shall have the right at all times to inspect the work, or any part thereof, as the same progresses, and to take or check such measurements as owner may desire. If, however, Owner fails to take or check up any measurements as furnished by Contractor, the Contractor's measurements of depths shall be deemed accepted by Owner and shall be conclusive for the purposes hereof.

12. Contractor shall pay all bills for material, labor or otherwise involved in or arising out of the drilling of said well, shall exhibit, if requested, receipted payrolls for all labor employed, and shall protect and hold harmless the Owner and the lands herein described, from any and all liens or claims whatsoever arising out of the work herein contemplated.

13. Contractor will fully comply with all the requirements of the "Workmen's Compensation Law" of Wyoming, and amendments thereto, and save and hold harmless the Owner from all loss or liability for damages sustained by persons injured, or the dependents of persons injured, by, through or on the work performed under this contract.

14. In case the rig shall be destroyed by fire as the result of any negligence of the said Contractor or employees, the said Contractor shall replace the rig and equipment destroyed without cost to the Owner; but if the destruction of the said rig by fire is occasioned by wholly accidental causes beyond the control of the said Contractor or employees, the Owner will replace the said rig, but in either case the Owner shall not be liable to the Contractor for delay pending the re-construction of the rig.

15. Owner will pay Contractor:

(a)Dollars (\$.....) per linear foot for the first feet (.....feet) or part thereof, of hole drilled and casing set.

(b)Dollars (\$.....) per linear foot for the next feet (.....feet) or part thereof, of hole drilled and casing set.

(c)Dollars (\$.....) per linear foot for all hole drilled beyond feet (.....feet).

16. Payments will be made by Owner to Contractor:

(a)Dollars (\$.....) when the well is completed to a depth of feet (.....feet).

(b)Dollars (\$.....) when the well is completed to a depth of feet (.....feet).

(c)Dollars (\$.....) when the well is completed to a depth of feet (.....feet).

(d)Dollars (\$.....) when the well is completed and finished.

(e) Balance on or before sixty (60) days after completion and acceptance of well by Owner.

Before making the above payments, or any of them, except last payment, the Owner shall be satisfied that the well is in good and proper shape for further drilling.

17. In the event that either party to this agreement fails to fully keep and perform each and all of the terms and agreements herein specified, then this contract may be terminated at the option of the party not in default and not causing the default. If the Owner shall fail to keep and perform the terms and conditions of this contract, then the Owner shall pay the Contractor for the number of feet actually drilled at the full contract price per foot, or repay all money spent by the Contractor in preparing to drill said well, upon the expiration of Sixty (60) days from the date when the said Contractor shall have ceased work and elected to terminate this contract on account of any such default of said Owner; PROVIDED, HOWEVER, that no mechanic's, laborer's or material-men's liens shall be filed or claimed within said Sixty (60) days; it being understood that the Contractor shall not be entitled to payment for any work or services performed prior to the termination of this contract until said Contractor shall have procured the discharge and release of all claims for liens whatsoever.

18. If Contractor is compelled to shut down for a period in excess of twenty-four hours (24 hours) because of Owner's failure to furnish fuel, water, tools, cordage or casing, Owner shall pay Contractor the sum of Dollars (\$.....) per day after said first twenty-four hours (24 hours) of delay,

so long as said shut-down shall continue; PROVIDED, HOWEVER, if tools are lost in the hole, or broken by Contractor or employees, delay and time lost in recovering or replacing same shall be at expense of Contractor.

19. Owner may use Contractor's crew of men in pulling casing, shooting the well, or any other labor on said well not embraced in this contract; and while so using Contractor's crew of men the Owner shall pay Contractor Dollars (\$.....) per day therefor.

20. While waiting for cement to set in said well, the Owner will furnish employment to Contractor's employees and pay them the same wages as Owner is paying other labor of the same class and character in the field at the time.

21. If Contractor fails to faithfully keep and perform any of the agreements or promises herein contained, the Owner shall retain any and all amount or amounts due from Owner to Contractor as liquidated damages incurred by Owner by reason of Contractor's breach of this agreement.

22. Neither Owner nor Contractor shall be liable for any delay or damage due, occasioned or caused by strikes, action of the elements or causes beyond control of the parties; and any delay due to above causes, or either of them, shall not be deemed a breach of or failure to perform this agreement or any part hereof.

23. For the purpose of performing this contract, the Contractor, his agents, employees and representatives, shall at all times have free access to said property during the progress and continuation of the work.

24. Contractor shall not assign this contract without the express consent of the Owner.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement the day and year first above written.

THE MIDWEST REFINING COMPANY

By
General Superintendent Owner.

Contractor.

Witness:

.....
.....

ROTARY FORM

DRILLING AGREEMENT

MEMORANDUM OF AGREEMENT, executed in triplicate this day of, 19...., between THE MIDWEST REFINING COMPANY, hereafter called "Owner," and, hereafter called "Contractor:"

WITNESSETH

That for and in consideration of the promises and agreements hereinafter contained, the parties agree as follows:

1. Contractor agrees to drill a certain well for Owner according to the specifications herein contained.

2. Said well shall be located by Owner and shall be upon the Quarter of Section, Township North, Range West of the 6th P. M., County, State of, known as, and shall be known and designated as well No.

3. Said well to be drilled to depth designated by Owner, but not to exceed feet.

4. Owner shall furnish at its expense:

(a) A complete derrick suitable and adaptable for rotary drilling purposes.

(b) A complete rig equipment for rotary drilling.

(c) Boilers aggregating 120 Horse Power.

(d) Fuel and Water, and light equipment.

(e) All casing to be used and set in said well.

(f) Sufficient material to properly construct rotary foundations, runways, head boards, finger boards in derrick, engine foundation and slush pits.

(g) All cement and cementing equipment.

5. Contractor shall furnish at his expense:

(a) All rotary equipment and machinery.

(b) All pipe, tool joints, pumps, rotary drilling line, fishing tools, rotary engine and all necessary material not expressly specified to be furnished by Owner.

(c) All necessary labor for the drilling of said well, and the setting of the casing therein at specified depths.

(d) All labor and expense setting up rotary machinery, and for breaking down drill pipe after well is completed.

(e) All food and sustenance for said labor, and a suitable camp for properly caring for all men working upon said well.

6. Contractor shall inspect and approve said derrick, rig, boilers, connections, equipment and material furnished by Owner before placing machinery upon said derrick preparatory to commencing drilling operations.

7. Contractor shall:

(a) Dig slush pits and construct mud troughs.

(b) Haul all material belonging to or furnished by Contractor.

(c) Set up and connect boilers.

(d) Clean boilers every two weeks, and if boilers are burned, Contractor to make repairs.

(e) Set a string of 8 $\frac{1}{4}$ -inch casing from the top to depth designated by Owner's Field Superintendent (approximately 2500 feet), but not to a greater depth than 2700 feet.

(f) Make all casing joints tight, allow inspection by Owner or its representatives; and make all strings of casing continuous and unbroken from top to bottom thereof when finally landed, with proper circulation around same for cementing should Owner desire to cement same.

(g) Furnish to Owner, without extra charge, the services of Contractor's Equipment and employees to cement well, which shall be done under Owner's supervision.

(h) Do all work under this contract in a thorough workman-like manner, and have all casing when set open to its full diameter for its entire length, enabling the passage of the next smaller size casing free and unobstructed throughout. The test of passing through said casing the next smaller size casing shall be made after the setting of each string of casing, and before the well is "bailed down," provided the Owner requires said test. If the Owner does not properly inspect each of said strings of casing or require a test to be made thereof, the Owner thereby agrees said well to have been satisfactorily drilled and in prop-

er condition to the respective depths of each of said strings of casing.

8. If said casing shall be damaged or collapse because of "bailing down" of fluid in the well under instructions of Owner, the Owner shall bear said damage and the Contractor not be liable.

9. When any string of casing is landed the same shall be tested by Owner, or in the presence of Owner's agents or representatives, or as designated by Owner, as Owner may elect; and, unless Owner shall notify Contractor to the contrary within forty-eight hours (48 hours) after said test, the particular string of casing tested shall be deemed satisfactory and accepted by Owner, and same shall constitute an acceptance by Owner of the work completed to the depth of said string of casing.

10. If for any reason Contractor is unable to complete said well No. as herein provided, Contractor shall immediately commence a new well at a point not more than 40 feet distant from the location of said well No., and the drilling of said new well shall be done according to the specifications and agreements herein contained; Provided, however, said new well shall be drilled to the depth at which said well No. was when lost, the Contractor bearing all expense of moving derrick and rig, excavating new pits, providing new connections, foundations and all work and material necessary for proper erection of rig and derrick; and furnish fuel, water, labor and lights in order that new well shall be properly drilled to the depth of well No. when lost, free of any additional cost to Owner.

11. All material and equipment furnished by Owner shall be in good condition. Contractor shall keep and maintain the same in good condition at Contractor's expense, and, upon completion of well or discontinuance of work, said material and equipment shall be turned over to Owner by Contractor in as good condition, subject, however, to ordinary wear and tear.

12. Contractor shall keep an accurate log of said well, which shall at all times be open to the inspection of Owner, its agents and representatives. A copy of said log shall be furnished by Contractor to Owner each day upon request.

13. Owner shall have the right at all times to inspect the work, or any part thereof, as the same progresses, and to take or check

such measurements as Owner may desire. If, however, Owner fails to take or check up any measurements as furnished by Contractor, the Contractor's measurements of depths shall be deemed accepted by Owner and shall be conclusive for the purposes hereof.

14. Contractor shall pay all bills for material, labor or otherwise involved in or arising out of the drilling of said well; shall exhibit, if requested, receipted pay rolls for all labor employed, and shall protect and hold harmless the Owner and the lands herein described from any and all liens or claims whatsoever arising out of the work herein contemplated.

15. Contractor will fully comply with all the requirements of the "Workmen's Compensation Law" of Wyoming, and amendments thereto, and save and hold harmless the Owner from all loss or liability for damages sustained by persons injured, or the dependents of persons injured, by, through or on the work performed under this contract.

16. Contractor will submit a correct, up-to-date, itemized (hole made, warehouse charges, board bills, etc.) statement of expense on the first day of each month. This statement Contractor will send to office of Owner at Casper, Wyoming.

17. Owner will pay Contractor:

(a)Dollars (\$.....) per linear foot for each and every foot of hole drilled and casing set to a depth of approximately feet, or to the sand.

(b)Dollars (\$.....) per linear foot for each and every foot of hole drilled and casing set from said above mentioned depth, or sand, to the depth at which said hole is completed or drilling stopped by order of Owner.

18. Payments will be made by Owner to Contractor:

(a) (\$.....) per foot on the fifteenth day of each month for actual number of feet of hole drilled by Contractor during preceding calendar month.

(b) Balance on or before 60 days after well is completed.

19. In the event that either party to this agreement fails to fully keep and perform each and all of the terms and agreements herein specified, then this contract may be terminated at the option of the party not in default and not causing the default.

If the Owner shall fail to keep and perform the terms and conditions of this contract, then the Owner shall pay the Contractor for the number of feet actually drilled at the full contract price per foot, or repay all money spent by the Contractor in preparing to drill said well, upon the expiration of Sixty (60) days from the date when the said Contractor shall have ceased work and elected to terminate this contract on account of any such default of said Owner; provided, however, that no mechanic's, laborer's or materialmen's liens shall be filed or claimed within said sixty (60) days; it being understood that the Contractor shall not be entitled to payment for any work or services performed prior to the termination of this contract until said Contractor shall have procured the discharge and release of all claims for liens whatsoever.

20. If Contractor fails to faithfully keep and perform any of the agreements or promises herein contained, the Owner shall retain any and all amount or amounts due from Owner to Contractor as liquidated damages incurred by Owner by reason of Contractor's breach of this agreement.

21. If Contractor is compelled to shut down for a period in excess of twenty-four (24) hours because of Owner's failure to furnish fuel, water, or casing, Owner shall pay Contractor the sum ofDollars (\$.....) per day after said first twenty-four (24) hours of delay, so long as said shut-down shall continue.

22. If derrick or rig or any part of equipment furnished by Owner to Contractor be damaged or destroyed by fire, Contractor at his expense will replace such derrick, rig, equipment or part thereof, unless such destruction or damage was caused by Owner or its agents or representatives.

23. Owner shall not accept said well, or make final payment thereon, until Owner's representatives shall have an opportunity to run tools in the hole to ascertain if said hole is free from iron.

24. Neither Owner nor Contractor shall be liable for any delay or damage due, occasioned or caused by strikes, action of the elements or causes beyond control of the parties; and any delay due to above causes, or either of them, shall not be deemed a

breach of or failure to perform this agreement or any part thereof.

25. For the purpose of performing this contract, the Contractor, his agents, employees and representatives, shall at all times have free access to said property during the progress and continuation of the work.

26. Contractor shall not assign this contract without the express consent of the Owner.

IN WITNESS WHEREOF, the parties have executed this Memorandum of agreement the day and year first above written.

THE MIDWEST REFINING COMPANY.

By
General Superintendent, Owner.

Witnesses:

.....
Contractor.

.....
.....

FORM OF ASSIGNMENT OF LEASE

KNOW ALL MEN BY THESE PRESENTS, That I, Colin Monaghan, of Denver, State of Colorado, the lessee in a certain indenture of lease dated the second day of February, A. D. 1920, from Silver Tabor, of Leadville, said State, demising certain lands situate in Carbon County, State of Wyoming, to-wit: the North half of the Northeast Quarter of Section fourteen, Township Seven, South Range Sixty-one West of the Sixth Principal Meridian, for the term of one year and so long thereafter as oil and gas are found upon said premises in paying quantity, do hereby sell, assign, transfer and set over to Albert B. Hunter, of said County of Carbon and State of Wyoming, all my estate, right, title and interest in and to said lease and said premises therein demised.

The consideration to be paid for this assignment is the sum of Ten thousand Dollars, of which the sum of Five thousand Dollars has this day been paid and its receipt is hereby acknowledged, and the remaining Five thousand Dollars is to be paid within thirty days from date hereof at the International Trust

Company, of Denver, Colorado, which bank will, upon said final payment being made, make delivery hereof to said Albert B. Hunter or his order.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty-first day of June A. D. 1920.

Colin Monaghan [SEAL]

The above assignment is in technical form and provides for escrow pending deferred payment, but any purported transfer in writing naming the parties, describing the lease and the land leased by it and expressing a consideration would be valid. And if the parties and consideration are expressed, nothing further is absolutely essential, if there is enough in the assignment to identify the lease intended to be set over.

Assignment of Option.

A personal option or offer to sell not yet acted on is not assignable. *Rease v. Kettle*, 49 S. E. 150.

And where the option runs to heirs and assigns the first assignee has no power to transfer to second assignee. *Wheeling Creek Gas Co. v. Elder*, 170 Fed. 215.

An option where it runs to heirs and assigns is assignable. *Landon v. Morehead*, 34 Okla. 701, citing many authorities among them *Fulton v. Messinger*, 61 W. Va. 477, 56 S. E. 830, which latter case holds that where there are no mention of assigns the option is personal and non-assignable.

Federal Lease Not Assignable.

Under the Oil and Gas Act of 1920 the form of the lease provides that the lessee shall not assign any interest, nor sublet any portion of the premises without the written consent of the Secretary of the Interior. See page 346.

For assignment, generally, see page 106.

GLOSSARY

A.

Aeroplane Oil. A white, straight-reduced viscous neutral oil having a gravity of $32\frac{1}{4}^{\circ}$ to 34° B., a flash-point of 415° F., a fire test of 480° F., a cold test of 20° F., and a viscosity of 185 to 200 Saybolt. (Bacon)

Air Gas. A combustible gas made by saturating air with the vapor of some volatile hydrocarbon mixture, as gasoline, and used for lighting and heating. (Webster)

Albrecht Condenser. A condenser used in petroleum distillation, to separate the distillate into its various fractions. (Mitzakis)

Alkali Test. A process by which kerosene is treated with a solution of caustic soda, making it purer and more suitable for illuminating. The kerosenes are divided into classes according to the results given by this alkali test and a fixed scale constructed. (Mitzakis)

Anticlinal. Of, or pertaining to, an anticline. (Webster). The crest of an anticlinal roll may be the apex of a vein. (*Tonopah Min. Co. v. West End Cons. Min. Co.*, 158 Pac. 881)

Anticlinal Line or Axis. In geology, the medial line of a folded structure from which the strata dip on either side. (Century)

Asphalt. A complex compound of various hydrocarbons, part of which are oxygenated. Related in origin to petroleum. Is brown or brownish black in color, melts at 90° to 100° F., and is mostly or wholly soluble in turpentine. Its varieties are albertite, elaterite, gilsonite and grahamite.

Asphalt-base. Asphalt-base oils contain asphalt and no paraffin. They are distilled to asphalt, and the distillates are cut according to gravity; such oils do not yield steam-refined cylinder stock or paraffin wax. It is used chiefly for fuel oil. (Bacon)

B.

Bedrock. The first solid formation under the usual layer of soil and debris which the drill penetrates.

Benzine. A colorless, inflammable and volatile liquid obtained from petro-

leum by fractional distillation and consisting of various hydrocarbons. Called also Petroleum spirit. (Standard)

Benzoline. 1. The more volatile portion obtained on redistilling benzine; boiling point about 70°-95° C. Often used as synonymous with Benzine. (Bacon)

2. A mixture containing hexane, heptane, octane, and other paraffins, petroleum spirit or legroin. (Standard)

Benzoyl. The commercial name applied to a mixture of substances, including benzine and its homologues. (Mitzakis)

Bitumen. See Asphalt. A general name for various solid and semi-solid hydrocarbons. In 1912 the term was used by the American Society for Testing Materials to include all those hydrocarbons which are soluble in carbon bisulphide, whether gases, easily mobile liquids, viscous liquids, or solids. (U. S. Geol. Surv.)

Bituminous. Containing much organic, or at least carbonaceous matter, mostly in the form of the tarry hydrocarbons which are usually described as bitumen. (Kemp)

Bituminous Shale. A shale containing hydrocarbons or bituminous material; when rich in such substances it yields oil or gas on distillation. Called also Pyroschist or Oil shale. (Standard)

Borax. A crystalline sodium biborate. $\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$. See also Tincal. (Dana)

Borehole. A hole made with a drill, auger or other tools, for exploring strata in search of minerals, for water supply, for blasting purposes, for proving the position of old workings, faults, and letting off accumulations of gas or of water (Gresley).

Bottom Water. In oil wells, water that lies below the productive sand, and is separated from it. Compare Top water; Edge water. (U. S. Geol. Surv. Bull, 658, p. 44)

Bradenhead. In oil-well drilling, an iron or steel head screwed into the top of the casing. The inner pipe projects up through it and is packed with some pliable substance, preferably rubber. The bradenhead is used to confine gas between the tubing and casing, or between two strings of casing, and has an outlet through which gas may be piped away. More commonly called Stuffing-box casing-head.

Bradenhead Gas. In oil wells, natural gas inclosed or confined by a bradenhead. It applies to all the gas that lies above the oil and through which the drill must go to reach the lower and more profitable oil sands.

Brown Petroleum. A natural solid, or semi-solid product produced by the action of air upon fluid bitumens. (Bacon)

Broxburn Oil Shale. A Scottish shale which yields 23 to 35 gals. of crude oil and 35 to 40 lbs. of ammonium sulphate per ton. (Bacon)

B. S. Oil. A term applied to crude-oil tank residues. (Bacon)

B. T. U. An abbreviation for British thermal unit.

C.

Cannel Coal. A massive, noncaking, tough, clean, block coal of fine, even, compact grain, dull luster, commonly conchoidal cross fracture, having a typical low-fuel ratio, a high percentage of hydrogen, easy ignition, long yellow flame, black to brown greasy streak, and moderate ash, pulverulent in burning. It is essentially a rock derived by solidification and partial distillation or oxidation of water-laid deposits consisting of or containing large quantities of plant spores and pollen grains and more or less comminuted remains of low orders of water plants and animals. (U. S. Geol. Surv. Bull. 659, p. 8) This word is derived from *Canwyl*, meaning a candle, from the readiness with which the coal ignites and gives off a steady flame. (Gresley)

Capping. The name given to a method by which the flow of a spouting oil well is stopped or restricted. When a very strong discharge of petroleum is expected, strong valves are attached to the casing, which permit the flow to be controlled.

Carbide. A binary compound of carbon with some other element. (Webster)

Carbon. An elementary substance occurring native as the diamond and also as graphite or black lead and forming a constituent of coal, petroleum, asphalt, limestone and other carbonates, and all organic compounds. Symbol, C, atomic weight, 12.0. Specific gravity, 1.7 to 3.6. (Webster)

Carboniferous. Bearing or carrying carbon. It usually implies that it carries coal. A period of geologic time and one of the paleozoic stratified rocks.

Casing. An outer pipe inserted in oil wells to prevent the caving of the sides and to shut out water.

Casing Cutters. Instruments used in oil fields for cutting casing prior to raising it to the surface, after the completion of a well. (Mitzakis)

Casing Dog. In well boring, a fishing instrument provided with serrated

pieces or dogs sliding on a wedge, to grip severed casing; also called Bull dog; Casing spear. (Nat. Tube Co.)

Casing Elevators. In well-boring, a device consisting of two semi-circular clamps, with a chain link on either, that are hinged together at one end and secured by a latch at the other. Used for raising and lowering casing. See also Casing dog. (Nat. Tube Co.)

Casing Head. 1. A fitting attached to the top of the casing of a well to separate oil and gas, to allow pumping, and cleaning out well, etc. It may have several lateral outlets, through which the flow of the oil can be controlled and led away to reservoirs by means of pipes. 2. In well boring, a heavy mass of iron screwed into the top of a string of casing to take the blows produced when driving the pipe. Also called Drive head. (Nat. Tube Co.)

Casing-head Gas. Natural gas rich in oil vapors. So named as it is usually collected, or separated from the oil, at the casing head. Frequently called Combination gas or Wet gas.

Casing Spear. An instrument used for recovering casing which has accidentally fallen into the well. The "bull dog," which is the most simple form of casing spear, consists of a steel body tapered at the top, on which slide two steel segments with serrated edges. When lowered inside the casing to be recovered, the steel segments are pushed upwards, along the narrow part of the body, but when raised, the segments remain stationary, and the weight of the casing forces the thicker part to exercise a pressure on the segments forcing them outward. The greater the pull, the greater is the corresponding lateral pressure. (Mitzakis). Also called Casing dog.

Centrocinal. In geology, an uplift of strata which gives them a partial quaquaversal dip. (Standard) Quaquaversal means inclining outward and downward in all directions from a center.

Churn Drill. Also called Cable drill or Well drill. A portable drilling equipment usually mounted on four wheels and driven by gasoline, electricity, or steam. Also applied to a stationery drill operated from a derrick as in oil-well drilling. The drill head is raised by means of a rope or cable and allowed to drop, thus striking successive blows by means of which the rock is pulverized and the hole deepened. (Bowles)

Coal. A carbonaceous substance formed from the remains of vegetation by partial decomposition. (U. S. Geol. Surv.) Solid or more or less distinctly stratified, varying in color from dark-brown to black, brittle, combustible, and used as a fuel. In its geological growth it seems to have first taken the form of peat, then lignite and finally bituminous

coal. When by the action of heat the bitumen has been driven off, it becomes anthracite. Its most familiar varieties are: lignite, bituminous, anthracite and cannel. Commercially it has innumerable distinctions according to its use for various purposes.

Coal Gas. Gas made from coal by distilling bituminous coal in retorts, and used for lighting and heating. (Webster)

Coal Oil. 1. The crude oil obtained by the destructive distillation of bituminous coal. 2. That distillate obtained from such a crude oil which is used for illuminating purposes—kerosene. 3. Crude petroleum. (Bacon)

Coal Tar. A tar obtained by the destructive distillation of soft or bituminous coal, as in the manufacture of coal gas. It is a complex mixture of hydrocarbons and other substances. It is the source of many dyestuffs. (Webster)

Coke. Bituminous coal from which the volatile constituents have been driven off by heat, so that the fixed carbon and the ash are fused together. Commonly artificial, but natural coke is also known. (U. S. Geol. Surv.)

Coking Coal. The most important of the bituminous coals, which burns with a long yellow flame, giving off more or less smoke, and creates an intense heat when properly attended. It is usually quite soft, and does not bear handling well. In the fire it swells, fuses, and finally runs together in large masses, which are rendered more or less porous by the evolution of the contained gaseous hydrocarbons. (Chance)

Conservation. Preserving, guarding, protecting. As understood in recent legislation it means the preservation of the forests, coal, oil and other minerals from indiscriminate waste, from non-economical processes and from monopoly.

Continuous Process of Distillation. A petroleum distillation process in which the crude oil flows slowly by gravitation through a series of stills or retorts each placed slightly lower than the preceding one. Each still has a carefully maintained temperature, and yields, therefore, continuously a product of given volatility. (Mitzakis)

Core Drill. Any form of drill which secures a continuous sample of the rock penetrated. The diamond drill is one of its forms. It is also known as adamantine drill, shot drill and calyx. It preserves a log of the strata through which it penetrates. It is described in *Bowles v. Virginia Soapstone Co.*, 115 Va. 690.

Core Snatcher. A company man who collects and takes care of drill cores when the drilling is being done by contract.

M. O. R.—61.

Cracking of Oil. A name given to the method by which hydrocarbons of one composition are reduced to lower members of the same series, or converted into other hydrocarbons during distillation. (Mitzakis)

Crew. The crew of an oil well consists of a driller and a tool dresser.

Culm. The refuse of a coal mine. It may contain coal intended for future recovery.

D.

Derrick. 1. The framework or tower over a deep drill hole, such as that of an oil well, for supporting the tackle for boring, hoisting or lowering. 2. Any of various hoisting apparatus employing a tackle rigged at the end of a spar or beam. (Webster)

Destructive Distillation. The process of heating an organic compound in a closed vessel, without access of air, and collecting the products. (Nicholls). A process of distillation in which hydrocarbon molecules are broken down. Thus illuminating gas is a product of the destructive distillation of coal. Also called Dry distillation, and Cracking.

Diamond Drill. A form of rotary rock drill in which the work is done by abrasion instead of percussion, black diamonds (borts) being set in the head of the boring tool. (Raymond). Used in prospecting and development work where a core is desired.

Distillation. Volatilization, followed by condensation to the liquid state. (Raymond)

Distillation, of Petroleum. The process by which heat is applied to the crude oil in order that its constituents may pass off in vapor, and by suitable arrangements subsequently collected in the form of a liquid. (Mitzakis)

Divining-Rod. See Douser and Dousing-rod.

Dome. In geology, an uplift in which the beds dip outward in all directions from a center (Webster). Oil and gas pools are frequently found beneath domes.

Douser (or Dowser). A person who with a forked hazel twig searches for water or ore underground. Also in use for a person who with a divining-rod or other instrument claims ability to locate an oil pool.

Dousing Rod. A divining-rod used by a douser.

Drilling. A term employed in a general way to denote the different processes employed for the discovery and extraction of petroleum or natural gas. Two general methods of drilling have come to be rec-

ognized: (a) Percussion systems, cable drilling, which consists of breaking up the ground by means of a sharp pointed instrument of a particular form, which is made to strike the ground in a series of blows; and (b) Rotary systems, a form of drilling required in ground where the hole will not stand up and necessitates forcing a pipe downward with a circular motion.

Drip. A name given to an apparatus attached to natural-gas wells to exclude from the mains any liquid, such as oil or water, that may accompany the gas. It usually consists of four iron tubes placed vertically, the inner two being connected by a cross tube. During the passage of the gas through this apparatus, the liquid becomes separated and accumulates in a tube called a tail piece, from which it is blown out from time to time.

Driven Well. A well which is sunk by driving a casing, at the end of which there is a drive-point, without the aid of any drilling, boring, or jetting device. (Meinzer)

Drive Pipe. 1. A pipe which is driven or forced into a bored hole, to shut off water, or prevent caving. (Nat. Tube Co.)

2. A thick type of casing fitted at its lower end with a sharp steel shoe, which is employed when heavy driving has to be resorted to for inserting the casing. (Mitzakis)

Drive-pipe Ring. A device for holding the drive pipe while being pulled from well. (Nat. Tube Co.)

Driving Cap. A cap of iron, fitted to the top of a pipe, as in an oil well, to receive the blow when driven and thus protect the pipe. (Century)

Dry Gas. Natural gas obtained from sands that produce gas only. It does not contain oil vapors.

Dry Hole. A drill hole in which no water is used, as a hole driven upward (Standard). A well in which no oil or gas is found.

Duster. An unproductive boring for oil or gas.

Dynamite. Originally, an explosive made of 75 per cent nitroglycerin absorbed in 25 per cent kieselguhr; now any high explosive containing explosive ingredients and used for blasting purposes. (Du Pont)

E.

Edge Water. In oil and gas wells, water that holds the oil and gas in the higher structural positions. Edge water usually encroaches on a field after much of the oil and gas has been recovered and the pres-

sure has become greatly reduced. Compare Top water; Bottom water, (U. S. Geol. Surv. Bull. 658, p. 44).

Element. In Nelson's Encyclopedia, elements are defined as "those, forms of matter which hitherto have defied all efforts to break them up into portions having different properties," which definition can hardly be improved. Whether they are really ultimate forms of matter is a question upon which there has been much speculation and but little evidence. The familiar gases, oxygen and nitrogen, are found free; also the common metals such as gold, silver and copper, but with these and a few other exceptions, a native single element is rare. The ancients limited the elements to air, earth, water and fire, to which Aristotles added ether, a basis for many philosophic theories and only that. In the middle ages came alchemy, which in the search for the impossible, found the practicable. The segregation of oxygen by Priestley in 1774 might be called the starting point for modern chemistry. When it was conceded that elements existed, as we now understand the term, the list of them was few, confined principally to the well known metals and the common gases. The table of them has been vastly enlarged, but the latest discoveries seem confined to minute constituents of the atmosphere and to metals all of them scattered in distribution and very rare in quantity. The spectroscope has indicated the existence of more than one element before it was known on earth.

The following table gives a list of the elements, their Symbols, Atomic Weights, Specific Gravity and Fusing Points according to the centigrade thermometer. (To convert Fahrenheit to Centigrade readings, subtract 32° from the former and then divide by 1.8.) Among the recent elements is Radium, the discovery of which has done much to shake the previously accepted definition of an element.

TABLE OF THE ELEMENTS.

Their Symbols, Atomic Weights, Specific Gravity and Fusing Points.

	Symbol.	Atomic Weight.	Specific Gravity.	Melting Point.
Aluminum	Al	27.1	2.6	657°
Antimony	Sb	120.2	6.6	630
Argon	A	39.88	(1.5)	—190
Arsenic	As	74.96	5.7	500
Barium	Ba	137.37	3.8	850
Bismuth	Bi	208.0	9.8	268
Boron	B	11.0	2.5	Infusible
Bromin	Br	79.92	(3.2)	—7
Cadmium	Cd	112.40	8.6	322

TABLE OF THE ELEMENTS—continued.

	Symbol.	Atomic Weight.	Specific Gravity.	Melting Point.
Caesium	Cs	132.81	1.9	27
Calcium	Ca	40.07	1.6	800
Carbon	C	12.005	3.5	Infusible
Cerium	Ce	140.25	7.04	623
Chlorin	Cl	35.46	(1.3)	—102
Chromium	Cr	52.0	6.5	1515
Cobalt	Co	58.97	8.8	1530
Columbium	Cb	93.1	7.2	1950
Copper	Cu	63.57	8.9	1184
Dysprosium	Dy	162.5		
Erbium	Er	167.7	4.8	
Europium	Eu	152.0		
Fluorin	F	19.0	(1.1)	—223
Gadolinium	Gd	157.3		
Gallium	Ga	69.9	5.9	29.5
Germanium	Ge	72.5	5.5	900
Glucinum	Gl	9.1	1.9	
Gold	Au	197.2	19.3	1064
Helium	He	4.00	0.12	
Holmium	Ho	163.5		
Hydrogen	H	1.008	(.06)	—259
Indium	In	114.8	7.1	155
Iodine	I	126.92	4.9	114
Iridium	Ir	193.1	22.4	2250
Iron	Fe	55.84	7.9	1550
Krypton	Kr	82.92	(2.2)	—169
Lanthanum	La	139.0	6.2	810
Lead	Pb	207.20	11.4	328
Lithium	Li	6.94	.59	186
Lutecium	Lu	175.0		
Magnesium	Mg	24.32	1.7	633
Manganese	Mn	54.93	7.4	1245
Mercury	Hg	200.6	(13.6)	—40
Molybdenum	Mo	96.0	8.6	1600
Neodymium	Nd	144.3	7.0	840
Neon	Ne	20.2		
Nickel	Ni	58.68	8.8	1480
Niton (radium emanation)	Nt	222.4		
Nitrogen	N	14.01	.79	—213
Osmium	Os	190.9	22.5	2500
Oxygen	O	16.00	(1.13)	—253
Palladium	Pd	106.7	11.4	1587
Phosphorus	P	31.04	1.8	44

TABLE OF THE ELEMENTS—continued.

	Symbol.	Atomic Weight.	Specific Gravity.	Melting Point.
Platinum	Pt	195.2	21.5	1780
Potassium	K	39.10	.87	62.5
Praseodymium	Pr	140.9	6.5	940
Radium	Ra	226.0		
Rhodium	Rh	102.9	12.1	2000
Rubidium	Rb	85.45	1.5	38.5
Ruthenium	Ru	101.7	12.3	2000
Samarium	Sa	150.4	7.8	1350
Scandium	Sc	44.1		
Selenium	Se	79.2	4.5	217
Silicon	Si	28.3	2.4	1200
Silver	Ag	107.88	10.5	962
Sodium	Na	23.00	.98	97
Strontium	Sr	87.63	2.5	800
Sulphur	S	32.06	2.07	115
Tantalum	Ta	181.5	16.8	2250
Tellurium	Te	127.5	6.2	455
Terbium	Tb	159.2		
Thallium	Tl	204.0	11.9	302
Thorium	Th	232.4	11.2	1450
Thulium	Tm	168.5		
Tin	Sn	118.7	7.3	232
Titanium	Ti	48.1	3.5	1850
Tungsten	W	184.0	19.3	1700
Uranium	U	238.2	18.7	1600
Vanadium	V	51.0	5.9	1680
Xenon	Xe	130.2	(3.5)	—140
Ytterbium (Neoytterbium)	Yb	173.5		
Yttrium	Yt	88.7	3.8	
Zinc	Zn	65.37	7.1	419
Zirconium	Zr	90.6	4.2	1300

In the above table of atomic weights, the basis is O=16. The figures in parentheses refer to the liquid form.

Escarpment. The precipitous face of a ridge; a cliff. Applied to oil-shale deposits.

F.

Fault. A break in the continuity of a vein, seam or body of rock. In coal mines it throws the bed, usually up or down, sometimes laterally. In oil mining it is material when the bore unexpectedly passes from one formation into another, showing by such change that an invisible fault has occurred. In Fay's Glossary, Bulletin 95, Int. Dept. is an

enumeration of many forms of faults and many different terms by which they are designated.

Fells Shale. A Scottish oil shale, which yields from 26 to 40 gal. of crude oil and from 20 to 35 lb. of ammonium sulphate per ton. (Bacon)

Field. The territory within which oil, coal or other mineral may be looked for. It must, of course, have wide and indefinite boundaries.

Fire Damp. A combustible gas formed by the decomposition of coal, which explodes upon ignition when mixed with atmospheric air. Firing point is the point at which fire damp so mixed, explodes.

Flashing Point; Flash Point. The temperature at which petroleum, being heated, begins to evolve vapor in such quantity that on the application of a small flame a momentary flash due to the ignition of the vapor occurs. (Mitzakis)

Flash Test. A test to determine the flashing point of an oil. (Webster)

Flowing Well. An oil well in which pumping is not necessary to bring the oil to the surface. (Redwood, p. 244)

Fractional Distillation. An operation for separating a mixture of two or more liquids which have different boiling points (Century). Used extensively in petroleum distillation.

Fume. The gas or smoke, given off by an explosion; also the volatile emissions from smelted mineral which escape into the air; also the volatile emanations from oil. Gas itself is a fume.

G.

Gas. One of the three forms, gaseous, liquid and solid, which all elements are supposed, theoretically, to assume; an elastic fluid which tends to expand indefinitely. As used in domestic life it means a distillation of hydrocarbons from coal, for heat or illumination. Water gas is a mixture of hydrogen and carbon monoxide; it is made by forcing steam over incandescent coke and is then carburetted with cracked oil. When found beneath the earth's surface fit for illumination or fuel, it is called natural gas. A poison gas is sometimes found as in Baca County, Colorado, which is not fit for fuel.

Gas Coal. Any coal that yields a large quantity of illuminating gas on distillation (Gresley). It should be free from sulphur and other impurities.

Gas Coke. The coke formed in gas retorts, as distinguished from that made in coke ovens. (Webster)

Gas Oil. One of the first products of distillation in the manufacture of lubricating oils. (Mitzakis)

Gasol. A product condensed from casing-head gas by applying a pressure of 850-900 pounds per square inch at ordinary temperature. It has a specific gravity of 0.5, and one pound of the liquid produces seven cubic feet of gas. (Bacon)

Gasoline. A name applied broadly to the lighter products derived from the distillation of crude petroleum having a specific gravity of 0.629 to 0.6673 (95° to 80° B.). It is volatile, inflammable, and used as a fuel in vapor stoves and engines; also as a solvent for fats and oils.

Gas Sand. A stratum containing natural gas.

Gas Separator. See Gas trap.

Gasser. A well that yields gas, especially an oil well producing much gas. (Webster)

Gas Trap. One of many devices for separating and saving the gas from the flow and lead lines of producing oil wells. The mixture of oil and gas is allowed to flow through a chamber large enough to reduce the velocity of the mixture to the point at which the oil and gas tend to separate. The gas seeking the top of the chamber, is drawn off free of oil, while the oil is discharged at the bottom. (Tech. Paper No. 209, Bu. Mines) Also called Gas separator; Gas tank.

Gas Well. 1. A deep boring, from which natural gas is discharged. (Raymond)

2. As used in oil and gas leases, a well having such a pressure and volume of gas, and, taking into account its proximity to market as can be utilized commercially. (*Prichard v. Freeland Oil Co.*, 84 S. E. 946)

Gas Zone. A formation which contains capillary or supercapillary voids, or both, that are full of natural gas under pressure considerably exceeding the atmospheric pressure. (Meinzer)

Geology is the science of the life of the earth as recorded in the rocks. It is essentially a modern science. Beginning by the study of the earth at widely separated points, its original nomenclature was notably local, as the Cambrian, the Devonian, the Mississippian formations. It advanced and built itself upon the theory of the development of life. Starting with the Archean, where no fossils are found, inferring the absence of life, it advanced to the Paleozoic or age of lower life and abundant vegetation. The third grand division is the Mesozoic meaning intermediate life, the age of reptiles, and the fourth is the Cenozoic separated into the Tertiary or age of mammals and the

Quaternary, the age of man. It is a speculative science, synthetic, building up a theory by the collation of separate facts, while Chemistry purports to be a fixed science. These two bear the same relation to each other that surgery bears to medicine.

To each of the periods above mentioned millions of years are allowed, the estimate of the number of millions being merely scientific guesses. The oil and coal formations are credited generally to the carboniferous subdivision of the paleozoic period. Geologic points and questions sometimes arise in oil and coal litigation but are not often of material value.

Gob-Fire. Fire originating spontaneously from the heat of decomposing coal refuse.

Go-Devil. A device for exploding the nitroglycerine used to shoot an oil well.

H.

Hand-dug Wells. The earliest known method of extracting petroleum was by means of pits dug by hand labor. The usual method was to dig a few feet and then allow the oil to collect at the bottom, whence it was subsequently collected by means of a suitable vessel. The deepest of these wells rarely exceeded 50 feet. (Mitzakis)

Hard-rock Phosphate. A term used in Florida to designate a hard, massive, close-textured, homogenous, light-gray phosphate, showing larger or smaller irregular cavities, that are usually lined with secondary mammillary incrustations of phosphate of lime. (Power)

Helium. An inert, monatomic, gaseous element occurring in the atmosphere of the sun and stars, and in small quantities in the earth's atmosphere, in several minerals and in certain mineral waters. Symbol, He; atomic weight, 4.0; specific gravity, 0.12. (Webster)

Homocline. In geology, a group of inclined beds of the same dip, which may be either monoclinical, one limb of a fold, or isoclinal, but whose actual relations are not determinate (La Forge). Used in a more restricted sense than a monocline in that it applies to small or fragmentary areas.

Hydrocarbon. A compound containing only hydrogen and carbon. The simplest hydrocarbons are gasses at ordinary temperatures; with increase in molecular weight they change to the liquid, and finally to the solid state. (Webster)

I.

Isocline. In geology, a series of isoclinal strata. An anticline or syn-

cline so closely folded that the rock beds of the two sides or limbs have the same dip. (Webster) Also called an Overturn, or Overturned anticlinal.

J.

Jars. In well drilling, a connection between the sinker bar and the poles or cables, made in the form of two links, that slide on each other from 6 to 36 inches. The jars permit the tools to fall on the down stroke, but on the up stroke jar them, or give them a sharp pull, tending to loosen them from any crevices or cavings that may hold them; a drill jar. (Nat. Tube Co.)

Jumper. A cornish form of the churn drill.

K.

Kerosene. A mixture of hydrocarbons whose average boiling point is about 450° F., freed on the one hand from gasoline or naptha and on the other hand from the heavy hydrocarbons that belong to gas oil and lubricating oil. (Bacon)

Kerosene Shale. Any bituminous shale from which illuminating oil may be obtained.

L.

Lignite. A brownish-black coal in which the alteration of vegetal material has proceeded further than in peat but not so far as sub-bituminous coal. (U. S. Geol. Surv.)

Log. The record of a drill hole, showing the strata through which it penetrates and the number of feet of each stratum. Also the record of the production of a well.

M.

Maltha. The pitch or gum resulting from the drying up of petroleum which has reached the surface.

Mineral. The term mineral, when employed in a conveyance, is understood to include every inorganic substance that can be extracted from the earth for profit whether it be solid, or fluid, as mineral waters, petroleum, and gas. (*Horse Creek Land and Min. Co. v. Midkiff* (W. Va.) 95 S. E. 27)

Mineral Oil. A synonym for petroleum.

Mining. The physical search for inorganic values. It includes both sur-

face and underground work. *Burdick v. Dillon*, 144 Fed. 739. As to whether oil-boring is mining, see chap. 2.

Mississippian. The first of the three epochs into which the Carboniferous period is ordinarily divided; regarded by many geologists as itself a period. Also the series of strata during that epoch. (La Forge)

Monoclinal. 1. Dipping only in one direction, or composed of strata so dipping; as, a monoclinial ridge; a monoclinial flexure. Sometimes improperly called uniclinal. 2. An abrupt downward flexure of nearly horizontal strata without any corresponding bend to form an anticline or syncline. 3. Loosely, any series of strata dipping in one direction only, as an isocline. (Standard)

Monocline. A monoclinial fold. (Webster)

N.

Naphtha. 1. As used by ancient writers, a more fluid and volatile variety of asphalt or bitumen. 2. In modern use, an artificial, volatile, colorless liquid obtained from petroleum; a distillation product between gasoline and refined oil. (Century)

Naphtha-gas. Illuminating gas charged with the decomposed vapor of naphtha. (Standard)

Natrium. Same as Sodium.

Natural Gas. A mixture of gaseous hydrocarbons found in nature; in many places connected with deposits of petroleum, to which the gaseous compounds are closely related. (U. S. Geol. Surv.)

Neutral Oil. An oil of 32° to 36° Bé. gravity, 290° to 318° F. flash point, and 47 to 81 sec. Saybolt viscosity at 70° F. It is sometimes mixed with animal or vegetal oils.

Noger. A jumper drill. (Raymond)

O.

Offset Well. A well drilled to prevent the drainage of oil outside the leased boundaries under the doctrine of protection.

Oil. A large class of unctuous, combustile substances, liquid or at least liquefiable upon heating, and soluble in ether but not in water. It includes animal, vegetable and mineral oils, but within its mining meaning is confined to Petroleum.

The standard dictionary enumerates more than 100 kinds of animal and vegetable oils but the only mineral oil of commercial importance is petroleum. Its many names are listed under that word. It

varies in color and odor, in its specific gravity between 0.8 and 0.92, and in its minor combinations with the essential hydrocarbons.

As a lubricant it is not equal to the general run of animal or vegetable oils but as a source of heat and light it excels them. In the amount and value of its total product it vastly exceeds all other oils combined.

Oil Derrick. A towerlike frame used in boring Oil Wells, to support and operate the various tools. (Standard)

Oil Field. A district containing a subterranean store of petroleum of economic value. (Webster)

Oil Gas. Illuminating gas, or heating gas, made by distilling oil in closed retorts. (Standard)

Oil-gas Tars. Tars produced by "cracking" oil vapors in the manufacture of oil gas. (Bacon)

Oil of Paraffin. A colorless to yellowish, limpid oil, having a specific gravity of about 0.880 and not boiling below 360°. It is composed principally of high-boiling hydrocarbons of the C_nH_{2n+2} series, and is obtained from the petroleum fraction boiling above 300°, the product being refined and decolorized. It is used in pharmacy, in ointments, and as the base for various coatings insoluble in water. (Bacon)

Oil Pool. An accumulation of oil in sedimentary rock that yields petroleum on drilling. The oil occurs in the pores of the rock and is not a pool or pond in the ordinary sense of these words. (U. S. Geol. Surv., Bull. 613, p. 184)

Oil Sand. Porous rock formation from which petroleum is obtained by drilled wells. (Webster)

Oil Saver. An appliance affixed to the mouth of an oil well when the latter requires deepening, although still flowing in small quantities. It consists of a cap fitted to the top of the well casing and having a lateral pipe communicating with a reservoir for the oil. (Mitzakis)

Oil Shale. Shale containing such a proportion of hydrocarbons as to be capable of yielding mineral oil on slow distillation.

Oil-well Packing. A packing inserted between the pipe and the interior surface of the boring in an oil well to keep surface water or water from the sides of the hole from running into the well, and to prevent oil in some wells from being forced out around the pipe by a pressure of gas. (Century)

Orchard-heating Oil. A dark oil from California petroleum, possessing a

gravity of 26° to 28° Bé.; it is also termed smudge oil, and is used in the orange and lemon groves to prevent frost from injuring the trees. (Bacon)

Ozocerite; Mineral Wax; Fossil Wax, Native Paraffin. Waxlike hydrocarbon, yellow-brown to green in color; translucent when pure; feels greasy. Streak is light to brown, and specific gravity is slightly less than 1. Soluble in carbon disulphide. (U. S. Geol. Surv.)

P.

Packer. A device lowered in the lining tubes, which swells automatically, or can be used to expand by manipulation from the surface at the correct time, to produce a watertight joint against the sides of the bore hole or the casing, thus entirely excluding water from higher horizons. (Mitzakis)

Packing. A general term relating to a yielding material employed to effect a tight joint. A common example is the sheet rubber used for gaskets. The term is also applied to the braided hemp or metallic rings used in some joints, that allow considerable or incessant motion. (Nat. Tube Co.)

Paraffin. A white, waxy, inodorous, tasteless substance a by-product of crude oil harder than tallow, softer than wax, with a specific gravity of 0.890. Its melting point is variable, depending somewhat upon its origin; it ranges between 43° and 65° C. (109° and 151° F.) An ultimate analysis yields, on the average, carbon 85 per cent. and hydrogen 15 per cent. It is insoluble in water, is indifferent to the most powerful acids, alkalies, and chlorine, and can be distilled unchanged with strong sulphuric acid. Warm alcohol, ether, oil of turpentine, olive oil, benzol, chloroform, and carbon disulphide dissolve it readily. It can be mixed in all proportions with wax, stearin, palmitin, and resin. (Bacon). It is the base of all high grade oil that is capable of being refined.

Paraffin-asphalt Petroleum. A combination of paraffin-base and asphalt-base petroleums. (Bacon)

Paraffin-base Petroleum. Crude oil which carries solid paraffin hydrocarbons and practically no asphalt. (Bacon)

Paraffin Butter. A variety of native paraffin used in making candles. (Standard)

Paraffin Coal. A light-colored bituminous coal used for the production of oil and paraffin. (Mitzakis)

Paraffin Fluxes. The residuals obtained from paraffin-base petroleum are characterized by containing $14\frac{1}{2}$ to 4 per cent. of hard paraffin scale, consisting to a predominating degree of saturated hydrocarbons (85.6 to 74.1 per cent.) and having a specific gravity of 0.92 to 0.94. In general, it may be said that paraffin fluxes yield only a small percentage of residual coke and contain but little sulphur. (Bacon)

Paraffin Oil. Lubricating oil made by the dry distillation method.

Peat. The residuum from the partial disintegration of the vegetation in bogs. Because of its high carbon content, it will burn freely when dry. It is supposed to be the beginning of what ultimately would become a coal formation. It is rich enough to yield both gas and tar on distillation.

Petrol. A variant for petroleum or its derivatives, particularly gasoline or motor spirit. (C. and M. M. P.)

Petrolatum Liquidum. The medicinal high-boiling petroleum oil of the United States Pharmacopoeia. (Bacon)

Petrolatum Oil. A colorless, straight-reduced, viscous, neutral oil, possessing a gravity of $32\frac{3}{4}^{\circ}$ to 34° Bé., a flash-point of 415° F., a fire test of 480° F., a cold test of 20° F., and a viscosity of 185 to 200. It is also termed 'medicinal oil.' (Bacon)

Petrolene. A liquid hydrocarbon mixture obtained from bitumen or asphalt. (Century)

Petroleum. A liquid inflammable combination of numerous hydrocarbons, chiefly of the paraffin series. Its derivation from *petros* (rock) and *oleum* (oil) indicates both its origin and its physical composition. It is along with coal one of the two great carbon compounds. It has been found on the surface of the ocean, in the crevices of rock and floating in springs but its one important source is from deep drilling thousands of feet into the earth.

It has been known as mineral oil, rock oil, natural oil, coal oil, carbon oil, earth oil, Seneca oil, St. Quirinas oil,—but even the primitive term petroleum, gives way to the universal accepted, unqualified monosyllable "Oil."

Petroleum Asphalt. The residues of asphalt-base petroleum, known commercially as petroleum asphalt. (Bacon)

Petroleum Coke. The residue obtained by the distillation of petroleum.

Petroleum Ether. A volatile, inflammable liquid used as a solvent for caoutchouc, etc.; a term sometimes applied to naphtha.

Petroleum Spirit. A volatile liquid obtained by the distillation of pe-

Petroleum. (Webster) A term variously used, but is sometimes applied to a petroleum distillate of a density of 0.71 to 0.74 and a boiling point of 90° to 140° C. It is used as a solvent. (Bacon)

Petrolene. A solid substance, analogous to paraffin, obtained in the distillation of Rangoon petroleum. Also, a term applied to a Scottish oil having a flash point of 126° F. (Bacon)

Phosphate Rock. A sedimentary rock containing calcium phosphate. The form in which the phosphate occurs is obscure (U. S. Geol. Surv.). The three main classes which have been exploited in the United States are *land rock*, occurring in clayey, gravelly, or compacted beds below the surface of the earth; *river rock*, a darker variety obtained from river and stream beds, and the *oolitic* phosphates of Tennessee. (Webster)

Phosphates. Salts formed by combining phosphoric acid with an alkali. Sodium, potassium, ammonium and calcium phosphates are used in fertilizers. None of these are used to a large extent except the calcium phosphate. See Phosphate rock.

Pipe Line. A line or conduit of pipe, sometimes many hundred miles long, through which petroleum is conveyed from an oil region to a market or to reservoirs for refining. (Standard). A line of pipe with pumping machinery and apparatus for conveying a liquid, or gas.

Pitch. One of the residues formed in the distillation of wood or coal tar. It is also obtained from petroleum. The term "pitch" is sometimes employed indiscriminately to mean bitumen or asphalt. (Mitzakis)

Plugging. Closing the mouth of a well either to prevent escape from or entry into it. Required by many States on abandonment of wells with minute statutory directions as to the kind of plug to be used.

Potash. The oxide of potassium, K_2O . Not an independent compound, but used as a basis of comparison for all potash minerals and artificial salts. The potash of commerce is derived from the minerals carnallite, kainite, sylvite (not found in the United States), and niter, and also from certain sea-weeds and wood ashes.

Potassium. A soft, light, silver-white metal of the alkali group, occurring abundantly in nature, but always combined. Symbol, K; atomic weight, 39.10; specific gravity, 0.865. (Webster)

Power Gas. Any gas made for producing power, as for driving gas engines. (Webster)

Producer Gas. A combustible gas to be used for fuel, for driving gas engines, for making illuminating gas, etc., made by forcing steam and

air through a layer of incandescent fuel, as coke, the resulting gas consisting largely of carbon monoxide and nitrogen. (Webster)

Production. The yield or output from the well. Natural production is the production from a well which has not been shot. Flush production is the first yield per day from the well, either with or without shooting. Settled production is the yield of oil per day after the first agitation has ceased and the well has reached an ordinary average production basis.

Public Domain. Land or water owned by the United States as distinguished from land where the government has parted with its title. Questions as to what is public domain usually arise on Indian lands or where reservations have been abandoned. *Winters v. U. S.*, 143 Fed. 748. The original title to the Public domain was in the Indian. *Cherokee Nation v. Georgia*, 5 Peters 1, 8 L. ed. 25; *U. S. v. Cook*, 19 Wall. 591, 22 L. ed. 210.

Pump. Any of numerous devices or machines for raising, transferring, or compressing liquids or gases by suction or pressure or both.

Pumping Well. This word covers the vast majority of wells where there is no pressure to produce a flow and the accumulating oil must be brought to the surface by artificial means. Vacuum pumping is forbidden in some fields.

Q.

Quaquaversal. Dipping outward in all directions from a central point: as a dome in stratified rocks. (La Forge)

R.

Reamer. A tool for enlarging a borehole. (Raymond)

Reduced Oil. Crude petroleum from which the more volatile hydrocarbons have been eliminated by partial evaporation. (Bacon)

Residuum. 1. The residue obtained on the distillation of crude petroleum after the constituents boiling below 620° F., have been removed.
2. The residue left in the still after the distillation of crude oil has been completed, and not the residue from redistilled condensates. Also known as the cokings and tailings. (Bacon)

Rock Gas. Same as Natural gas.

Rock Drill. A machine for boring in rock, either by percussion, effected by reciprocating motion, or abrasion, effected by rotary motion. Compressed air is the usual motive power, but steam, electricity and electricity in combination with compressed air are also used.

Rock Oil. A synonym for Petroleum.

Rod Guide. An appliance attached to the drilling rod in oil wells that serves to prevent the rod from oscillating or knocking against the sides of the borehole. (Mitzakis)

Room and Pillar. A system of mining in which the distinguishing feature is the winning of 50 per cent or more of the coal in the first working. The coal is mined in rooms separated by narrow ribs or pillars. The coal in the pillars is won by subsequent work.

Rope Drilling. Drilling in the ground with a bit attached to the end of a rope to which a twisting motion is given. Sometimes called Jump drilling, as the rope with the bit is raised and dropped.

Royalty. Rent reserved in kind as a percentage of the oil, coal or ore mined.

Run of Mine. Coal as it is dug in the mines, including lump and fine coal together, without any preparation or screening. (Nicolls)

S.

Safety First. A term often applied to accident prevention methods, and first-aid and rescue work. As a slogan, was first used nationally by Dr. Joseph A. Holmes, the first director of the U. S. Bureau of Mines, at the national mine safety meet in Pittsburgh, Pa., in 1911.

Saint Quirinus Oil. Petroleum used medicinally in Germany as early as 1436, the supply coming from the Tegernsee district of Bavaria. (Bacon)

Saline Dome. An up-swelling of the earth's surface on the coastal flats of Louisiana and Texas, one-fourth to one mile in diameter, often showing a marshy depression at the summit with escaping oil or gas, or both, around the periphery of the dome.

Sand. A term in oil seeking to designate the stratum of whatever composition that carries the oil or gas.

Sand Line. In well boring, a wire line used to lower and raise the bailer or sand pump, which frees the borehole from drill cuttings. (Nat. Tube Co.)

Sand Pump. A cylinder with a valve at the bottom, lowered into a drill hole from time to time to take out the accumulated slime resulting from the action of the drill on the rock. Called also Shell pump and Sludger. (Raymond)

M. O. R.—62.

Scraper Chaser (Oil regions, U. S.). One of a number of men whose business it is to follow the scraper (go-devil) in the petroleum pipes and give instant notice if a clog occurs (Standard). He follows the pipe line on the surface and detects the location of the go-devil by sound, especially where pipes are shallow.

Seneca Oil (U. S.). Petroleum, early used as a remedy among the Senecas and other Indians. (Webster)

Shale. A fine-grained, fissile, argillaceous, sedimentary rock characterized by rather fragile and uneven laminae and commonly a somewhat splintery fracture. Often, but incorrectly, called *slate* by miners, quarrymen, well-drillers, and others. (La Forge)

Shale Naphtha. Naphtha obtained from Shale oil. (Bacon)

Shale Oil. A crude oil obtained from bituminous shales, especially in Scotland, by submitting them to destructive distillation in special retorts. (Bacon)

Shooting a Well. Filling the hole through the oil sand with a high explosive (generally nitro glycerin) which when shot increases the collection area. (G. L. Warson)

Sicilian Oil. Petroleum. It was used, under this name, for illuminating purposes at Agrigentum, Sicily, before the beginning of the Christian era (Bacon).

Slate. A coal miner's term for *any* shale or slate accompanying coal; also sometimes applied to bony coal.

Slip. 1. A fault. 2. A smooth joint or crack where the strata have moved upon each other. 3. A joint in the coal upon which there may have been no perceptible movement. (Steel)

Sodium. A soft, waxy, silver-white metallic element of the alkali group. Symbol, Na.; atomic weight 23.00; specific gravity, 0.97. (Webster)

Solar Oil. A name given to gas oil from petroleum of the Gulf or Mid-Continent field.

Spindle Oil. The lighter portion of the petroleum distillates suitable for lubrication of light-running machinery. (Bacon)

Spouter. An oil well the flow of which has not been controlled by the engineers. (Webster)

Spudding in. The actual commencement of drilling after the rig is completed. The first abrasion of the soil made by the drill. This is considered the actual commencement of drilling operations.

Squib. In well boring, a vessel, containing the explosive and fitted with a time fuse, that is lowered into a well to detonate the nitroglycerin charge. (Nat. Tube Co.)

Starter. A drill used for making the upper part of a hole, the remainder of the hole being made with a drill of smaller gage known as a *follower*. (Bowles)

Synclinal. In geology, characteristic of, pertaining to, occurring, or situated in, or forming a syncline. (La Forge) The opposite of anticlinal.

Synclinal axis. In geology, the central line of a syncline, toward which the beds dip from both sides. (La Forge)

Syncline. A fold in rocks in which the strata dip inward from both sides toward the axis. The opposite of Anticline. (La Forge)

T.

Tank. Equivalent to vat; any device for holding oil for transportation or further delivery.

Tankage. 1. The act or process of storing oil, etc., in a tank. 2. The price charged or paid for storage in a tank. 3. The capacity of a tank or tanks. 4. The waste residue deposited in lixiviating vats or tanks. (Century)

Tar. A thick, brown to black, viscous liquid obtained by the distillation of wood, coal, peat, and other organic materials, and having a varied composition according to the temperature and material employed in obtaining it. (Webster)

Tincal. Crude native borax, formerly imported from Tibet. (Webster)
Also spelled Tinkal.

Top Water. Water which enters an oil or gas well from a sand above the productive sand. *Compare* Bottom water; Edge water. (U. S. Geol. Surv. Bull. 658, p. 44)

Torpedo. A cartridge or shell lowered or dropped into a bored oil well and there exploded to clear the well of obstructions or to shatter into the source of supply.

Tower. A day's work of a drilling crew. A tower runs from 12 noon until 12 midnight; and from midnight until noon.

Transformer Oil. An oil for high tension electrical transformers free from water and mineral acids. It should show little or no volatility at 100° C. Those machine oils, derived from petroleum, which have a

flash point of over 160°C . (open test), with a volatility of less than 0.1 per cent in five hours at 100°C ., are usually suitable for use in transformers. (Bacon)

Tube Packing. A bag of flaxseed, or ring of rubber, made to occupy the space between the tube of an oil well and the bored hole to prevent access of water to the oil-bearing stratum. (Nat. Tube Co.)

Tubing. 1. The Tube-lining of boreholes; casing. 2. The act of lining a deep borehole by driving down iron tubes. (Ihlseng)

U.

Uniclinal. Sloping in one direction; a monoclinal.

V.

Vapor. Any visible diffused substance floating in the air and impairing its transparency, as smoke, fog, etc.

Vapor Density. The relative weight of a gas or vapor as compared with some specific standard, usually hydrogen, but sometimes air. (Webster)

Verifier. In gas testing, an apparatus by which the amount of gas required to produce a flame of a given size is measured; a gas verifier. (Standard)

Vivianite. A hydrous, ferrous phosphate, $\text{Fe}_3(\text{PO}_4)_2 \cdot 8\text{H}_2\text{O}$, colorless when unaltered, or blue to green, growing darker on exposure (Webster). Called also Blue iron earth; Blue ocher.

W.

Water Surface. In oil wells, the level or inclined plane between the oil, or gas, and the edge water upon which the oil or gas rests. Not to be confused with ground-water level or table. (U. S. Geol. Surv. Bull. 258, p. 48)

Well Packing. A bag of flaxseed or other absorbent material packed around the tube of an oil well to prevent access of water to the oil in the well. (Standard)

Well Rig. An assemblage of all mechanisms, including power-motors, necessary to drilling, casing, and finishing a tube or drilled well. (Standard)

Well Shooting. The firing of a charge of nitroglycerin, or other high ex-

plosive, in the bottom of a well for the purpose of increasing the flow of water, oil, or gas. (Du Pont)

Wet Gas. Natural gas which contains gasoline extractible in commercial quantities. It occurs with, or immediately above the oil.

Wildcat. 1. Territory supposed to carry oil but not so proved. 2. Any risky venture in oil or other mining. 3. Applied to companies having no substantial assets, or legitimate foundation for an honest prospectus.

X.

Xenotime. Essentially an yttrium phosphate, YPO_4 . Cerium and Erbium are sometimes present, also silicon and thorium as in monazite. (Dana)

Z.

Zone. In geology, used in the same sense as horizon to indicate a certain geological level or chronological position, without reference to the local attitude or dip of the rock. (Roy. Com.)

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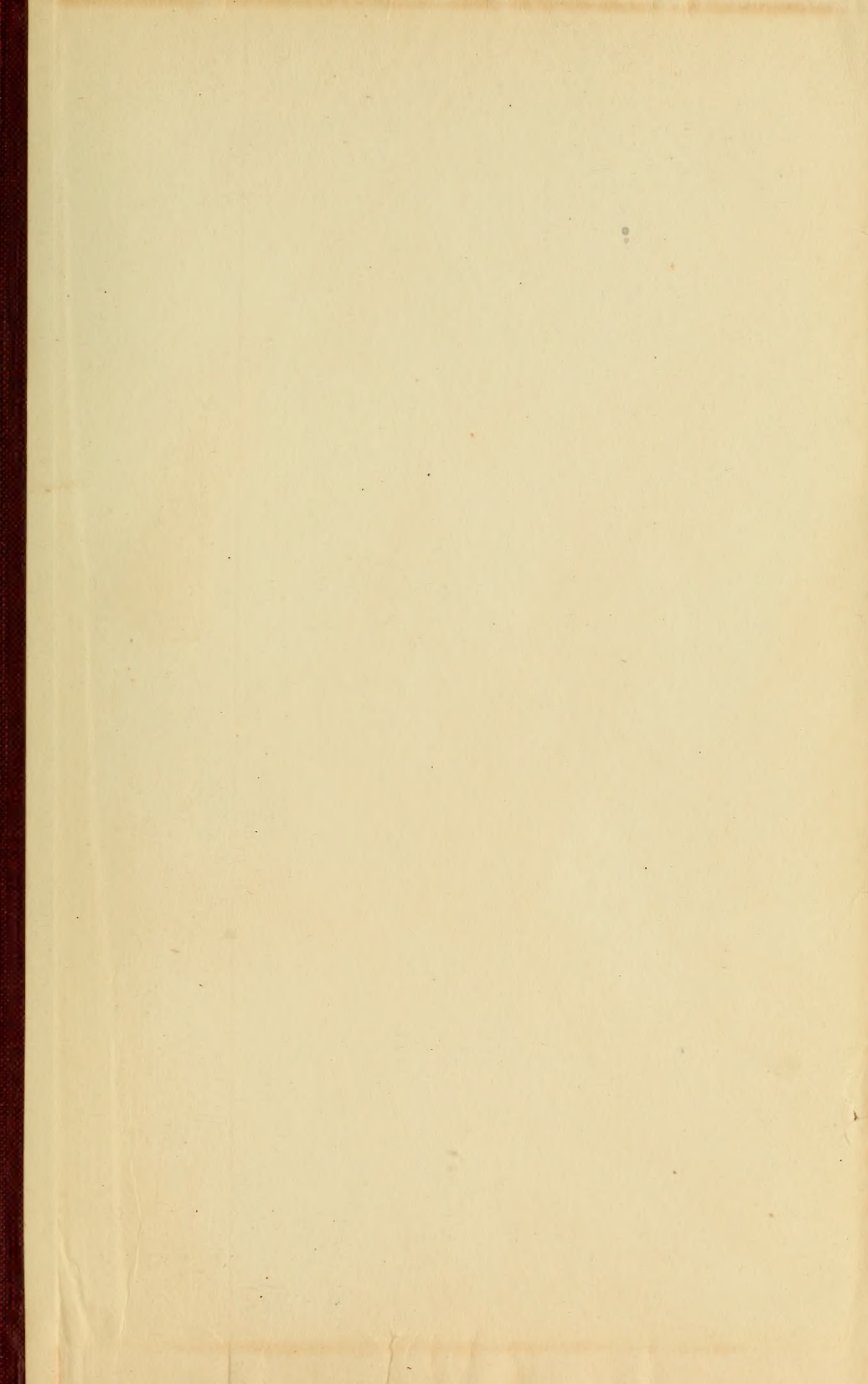
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